

THE
OFFICE
OF
SHERIFF:

SHEWING

Its HISTORY, ANTIQUITY, POWERS, and DUTIES; the Manner of appointing the *High Sheriff*, his *Under-Sheriff*, and other *Deputies*: Also, the Election of *Sheriffs* of *London* and *Middlesex*, with the Bye-Laws of the City relating thereto; and other useful Matter.

TOGETHER WITH

The *Nature of Actions* by and against *Sheriffs*, including all the *Modern Determinations* to the End of *TRINITY TERM* last; with necessary *Precedents* of Returns to Writs, &c.

THE SECOND EDITION,

CORRECTED, AND CONSIDERABLY IMPROVED.

TO WHICH IS ADDED,

THE OFFICE AND DUTY OF CORONER:

WITH AN APPENDIX OF USEFUL PRECEDENTS.

By JOHN IMPEY, K
OF THE INNER TEMPLE,

AUTHOR OF "THE MODERN PLEADER," CALCULATED FOR THE OFFICE OF AN ATTORNEY; AND "THE PRACTICE OF THE COURTS OF KING'S BENCH, AND COMMON PLEAS."

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TO
THE HONOURABLE
SIR *FRANCIS BULLER*, BART.
ONE OF HIS MAJESTY'S JUSTICES
OF THE COURT OF COMMON PLEAS,

THIS WORK

IS,
WITH HIS PERMISSION,
MOST RESPECTFULLY INSCRIBED,

BY
HIS MOST OBEDIENT
AND OBLIGED HUMBLE SERVANT,

THE AUTHOR.

TO
THE HONOURABLE
SIR FRANCIS BULLOCK
ONE OF HER MAJESTY'S JUSTICES
OF THE COURT OF COMMON PLEAS
IN THE CITY OF LONDON
THEIR WORK
IN THE
CITY OF LONDON
MOST RESPECTFULLY INSCRIBED
BY
THE AUTHOR
THE LONDON

ADVERTISEMENT.

It is now upwards of thirteen years since the first edition of "The Office of Sheriff" was published. The work having been favourably received by the Profession, and the whole of that impression having been long since sold, the Author has been called upon by several gentlemen, for more than two years past, for a new edition.

To render the book more worthy their acceptance, he has given much diligence and attention to the subject; having treated of that Officer's duty *under various heads not mentioned in the former edition.*

Many of the returns of the writs, which he found upon more mature consideration to be inaccurate, he has amended; and a variety of new and useful notes and observations will be found throughout.—All the cases relevant to the subject, and which have been determined by the Courts down to the end of last Trinity term, have been carefully collected and noted.

Nothing having been written upon the Office of Coroner for nearly thirty-eight years, the author has subjoined to the Office of Sheriff, a small treatise relative, not only to the *criminal branch* of the law of the *greater*, but also that of the *lesser*, degree, under the Coroner's inquiry, with the forfeitures annexed; to which he has added the *judicial* and *ministerial* duties of that Officer, together with the manner of holding his court, with a full collection of precedents of inquisitions, and other matter necessary for Coroners.

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*The Names of the CINQUE PORTS, Two Ancient Towns,
and their Members, according to the Charters.*

	NAMES.	COUNTIES.
Cinque Ports	Hastling	Suffex
	New Romney	Kent
	Hithe	
	Dover	
	Sandwich	
Antient Towns	Rye	Suffex
	Winchelsea	
Members corporate to	Hastling	Pevensea
		Seaford
	Romney	Lydd
	Dover	Folkstone
	Sandwich	Faversham
		Fordwich
	Rye	Tenterden
Members not corporate to	Hastling	Bulverheath
		Petit Sham
		ridney
		Beakthorne
		Grange alias Grenthe
	Romney	Promehill
		Old Romney
		Denzemarth
		Oswardstone or Ovelstone
	Hithe	Westheath
	Dover	Margate
		St. Johns
		Gravesend
		Burchington Wood
		alias Woodchurch
		St. Peters
	Sandwich	Kingstowne
		Ringwould
		Deale
		Walmer
		Romgate
		Stoner
		Sarr
		Brighlingsea

2512

2.5.11

THE OFFICE OF SHERIFF.

Of the Division of England into Counties.

THE civil division of the territory of England is into counties, of those counties into hundreds, of those hundreds into tithings or towns. Which division, as it now stands, seems to owe its original to king *Aifrad*: who, to prevent the rapines and disorders which formerly prevailed in the realm, instituted tithings; so called, from the *Saxon*, because ten freeholders, with their families, composed one. These all dwelt together, and were sureties or free pledges to the king, for the good behaviour of each other, and if any offence was committed in their district, they were bound to have the offender forthcoming. *Flat. 1. 47.* And therefore antiently no man was suffered to abide in *England* above 40 days, unless he were inrolled in some tithing or decennary. *Mirr. c. 1. f. 2.* One of the principal inhabitants of the tithing is annually appointed to preside over the rest, being called the tithingman, the headborough, and in some counties the borsholder, or boroughs-ealder, being supposed the discreetest man in the borough, town, or tithing. *Finch. L. 8.*

Civil division of
England into
counties, which
owes its origin
to *Aifrad*,

who instituted
tithings.

Tithingman the
discreetest man
in the town, &c.

Tithings,

Signification of
tithings, &c.

Town or vill,
definition of.

City.

Borough.

Hamlets.

Entire vills.

Demi-vills.

These towns
contained but
one parish, and
one tithing, but
now divided into
several.

Hundred what,

Tithings, towns, or vills, are of the same signification in law, and are said to have had, each of them, originally a church, and celebration of divine service, sacraments and burials. 1 *Inft.* 115. though that seems to be rather an ecclesiastical, than a civil distinction. The word *town* or *vill* is indeed, by the alteration of time and language, now become a general term, comprehending under it the several species of cities, boroughs, and common towns. A city is a town incorporated, which is or hath been the see of a bishop: and though the bishoprick be dissolved, as at *Westminster*, yet still it remaineth a city. *Co. Lit.* 109. A borough is now understood to be a town, either corporate or not, that sendeth burgesses to parliament. *Ibid.* 164. Other towns there are, to the number, *Sir Edward Coke* says, of 8803, which are neither cities nor boroughs. *Ibid.* 116. some of which have the privilege of markets, and others not; but both are equally towns in law. To several of these towns there are small appendages belonging, called *hamlets*; which are taken notice of in the stat. of *Exeter*, 14 *Ed.* 1. which makes frequent mention of entire vills, demi-vills, and hamlets. Entire vills, *Sir Henry Spelman, Gloss.* 274. conjectures to have consisted of ten freemen, or frankpledges, demi-vills of five, and hamlets of less than five. These little collections of houses are sometimes under the same administration as the town itself, sometimes governed by separate officers; in which last case they are, to some purposes in law, looked upon as distinct townships. These towns, as was before hinted, contained each originally but one parish, and one tithing; though many of them now, by the increase of the inhabitants, are divided into several parishes and tithings, and sometimes, where there is but one parish, there are two or more vills or tithings.

As ten families of freeholders made up a town or tithing, so ten tithings composed a superior division,

vision, called a hundred, as consisting of ten times ten families. The hundred is governed by an high constable or bailiff, and formerly there was regularly held in it the hundred court for the trial of causes, though now fallen into disuse. In some of the more northern counties these hundreds are called wapentakes. *Seld. in Fortesc. c. 24.*

The subdivision of hundreds into tithings seems to be most peculiarly the invention of *Alfred*: the institution of hundreds themselves he rather introduced than invented: for they seem to have obtained in *Denmark*; *Seld. Tit. of Hon. 2. 3. 5.* and we find that in *France*, a regulation of this sort was made above two hundred years before; set on foot by *Clotharius* and *Childebert*, with a view of obliging each district to answer for the robberies committed in its own division. These divisions were, in that country, as well military as civil: and each contained a hundred freemen, who were subject to an officer called the *centenarius*, who in the middle age, was an officer that had the government or command, with the administration of justice, in a village, or division, containing an hundred freemen; a number of which *centenarii* were under the jurisdiction and command of a superior officer called the count, or *comes*. *Montespi. Laws. 30. 17.*

An indefinite number of these hundreds make up a county or shire. *Shire* is a *Saxon* word signifying a division; but a county, *comitatus*, is plainly derived from *comes*, the count of the *Franks*; that is, the earl or alderman (as the *Saxons* called him) of the *shire*, to whom the government of it was intrusted. This he usually exercised by his deputy, still called in *Latin*, *vico-comes*, and in *English*, the sheriff, shrieve, or shire-reeve, signifying the officer of the shire; upon whom by process of time the civil administration of it is now totally devolved. In some counties there is an intermediate division, between the shires and the hundreds, as

governed by a high constable.

Hundreds called wapentakes.

Subdivision of hundreds introduced by *Alfred*.

Centenarius was an officer who had the government of a village containing 100 freemen.

A number of which *centenarii* were under the command of the count.

An indefinite number of these hundreds make up a county or shire.

County derived from *comes* the count, the earl of the shire, to whom the government is intrusted, and is usually exercised by his deputy called the sheriff. Lathes and rapes.

lathes in *Kent*, and rapes in *Sussex*, each of them containing about three or four hundreds a piece— These had formerly their lath-reeves and rape-reeves, acting in subordination to the shire-reeve.

Where a county is divided into 3 jurisdictions, called trithings.

Trithings still subsist in county of York.

The number of counties.

Where a county is divided into three of those intermediate jurisdictions, they are called trithings. *Ll. of Ed. con. c. 34.* which were antiently governed by a trithing-reeve. — These trithings still subsist in the county of *York*, where, by an easy corruption they are denominated ridings; the north, the east, and the west riding. The number of counties in *England* and *Wales* have been different at different times: at present there are forty in *England*, and twelve in *Wales*. 5 Co. 109. b.

Were divided for the better administration of justice, and sheriffs appointed yearly.

Counties palatine 3.

Chief governors heretofore sent out all writs in their name.

Why privilege granted,

The reason why those counties were divided, seems to be for the better government, and more easy administration of justice; and for the better execution of the laws in the several counties, sheriffs are appointed; and by *Dalton*, there is no part of the kingdom that lieth not in some county. Of these 52 counties, there are 3 of special note, *Chester*, *Durham*, and *Lancaster*, which are therefore termed *counties palatine*. The former are such, by prescription, or immemorial custom; or at least as old as the *Norman* conquest. *Seld. Tit. Hon. 2. 5. 8.*; the latter was created by king *Edward 3.* in favour of *Henry Plantagenet*, first earl and then duke of *Lancaster*. *Seld. ibid. 4 Inst. 204.*

The chief governors of these counties palatine, heretofore, by a special charter from the king, sent out all writs in their own names; and touching justice, did all things as absolutely as the king himself in other counties; only acknowledging him their superior and governor: whence palatine, a *palatio*, because the owners of them had *jura regalia* as fully as the king hath in his palace. These palatine privileges were probably granted to them, the counties of *Chester* and *Durham*, because they bordered on enemies counties, *Wales* and *Scotland*, in

in order that the owners being encouraged by so large an authority, might be the more watchful in its defence, and that the inhabitants having justice administered at home, might not be obliged to go out of the county, and leave it open to the enemies incursions; and upon this account also there were formerly two other counties palatine, *Pembrokeshire* and *Hexhamshire*, the latter was united with *Northumberland*; but these were abolished by parliament, the former in 27 H. 8 the latter in 14 Eliz. Likewise their power was much abridged, the reason for their continuance in a manner ceasing; though still all writs are witnessed in their names, and all forfeitures for treason by the common law, accrue to them. 4 Inst. 205. Of these three, the county of *Durham* is now the only one remaining in the hands of a subject.—4 Inst. 205. 1 Vent. 155. 157.

Power abridged
by H. 8.

The *Isle of Ely* is not a county palatine, but only a royal franchise: the bishop having by grant of king *Henry the First*, *jura regalia*, within the *Isle of Ely*; whereby he exercises a jurisdiction over all causes, as well criminal as civil. 4 Inst. 220.

Isle of Ely royal
franchise.

There are also counties corporate; which are certain cities and towns, some with more, some with less territory annexed to them; to which out of special grace and favour the kings of *England* have granted to be counties of themselves, and not to be comprized in any other county; but to be governed by their own sheriffs, and other magistrates, so that no officers of the county at large have any power to intermeddle therein.—Such are *London*, *York*, *Bristol*, *Norwich*, *Coventry*, and many others.

Counties corporate.

Of the *Name* and *Antiquity* of the *Sheriff*.

Name and antiquity.

IT appears from several authorities, that long before the time of the *Romans*, the sheriff was the deputy of the *consul*, and called *vice-consul*; they calling that *consulatum*, which we call *comitatus*. *Co. Lit.* 168. *Selden's Janus* 53, 73. *Mirr.* 9. 1 *Ro. Rep.* 237. And in the middle age we find the word *consul*, used for *comes*, *count*; and *præ-consul*, for *viscount*—When the earls left their custodies, then was the custodies of counties committed to *viscounts*, and they are thereupon called *vice-comites*, *quia vices comitis supplent*.

Bracton, lib. 1. c. 8. says, that as *comes* is derived from *comitatus*, so *consul* is derived from *consulendo*; and in the laws of *Edward the Confessor*, mention is made of *vice-comites*, and *vice-consules*.

Definition of the word sheriff.

The word *sheriff* or *shire-reve* is derived from two *Saxon* words *scire*, province or *shire*; or rather from *seiran*, to divide, and *gerefa*, grave, *Reve* or perfect, being denominated from the first division of the kingdom into counties. *Chamb. Dict.* title *sheriff*.

Definition by Lord Coke.

Lord *Coke* says, that *shireve* is a word compounded of two *Saxon* words, viz. *shire*, and *reve* *shire*, *satrapia*, or *comitatus*, and comes of the *Saxon* verb, *shiram*, (i. e.) *pati*, for that the whole realm is parted and divided into *shires*; and *reve*, is *præfectus* or *propositus*; so as *shireve* is the *reve* of the *shire*, *præfectus satrapie*, *provincie*, or *comitatus*. And he is called *præfectus*, because he is the chief officer to the king, within the *shire*, for the words of his patent be, *commissimus vobis custodiam comitatus nostri* &c. 1 *Inst.* 168. a. and he hath a three-fold custody, viz. *vita justitie*, for no suit begins, and no process is served but by the sheriff: also, he is to return indifferent juries for the trial of men's lives, liberties, lands, goods, &c. Secondly, *vita legis*, he is after long suits, and chargeable to make

make execution, which is the life and fruit of the law. Thirdly, *vita Reipublicæ*. He is *principalis conservator pacis* within the county, which is the life of the commonwealth.

Mr. Dalton says, that the most eminent and supreme dignity from the Conquest until the 11th year of Ed. 3. was the *earl* or *countée*, being antiently of the blood royal, and taking their names *comites à comitatu*, or *comites nomen acceperunt à comitando*, quia principem comitarentur ad bella, publicaque negotia ejus lateri semper bærentes, or as some say, kings vouchsafed to call them *comites*, companions; for that both out of their love they will, and out of knowledge can, and out of courage (the true ground of antient nobility) dare to advise boldly and truly upon every occasion: and these were of antient time *præfæcti seu præpositi comitatus*, the rulers or governors of *counties* or *shires*, under the king, for so imports the Saxon words *shire-reve*, *id est*, *le reve*, *del shire*, which is as much as *præpositus comitatus*. And those earls had antiently committed to them from the king the charge and custody of the county, which the *sheriff* now hath. *Smith de repub. Anglo. 59. vid. 9 Coke 49 and 97. Dalt. 1.*

Dalton's definition
tion ch. 1.

Speed. fo. 4. says, king *Ælfred* first dividing this kingdom into several counties (or shires) instituted a *prefect* or *lieutenant* in every of those counties, which then were called *custodes*, keepers, and afterwards *comites*, *earls*, who were to keep the county in obedience to the king, and to suppress the outrages of notorious robbers.

Speed. his definition.

Mr. Justice *Blackstone*, in the 1st vol. of his commentary says, The sheriff is an officer of very great antiquity in this kingdom, his name being derived from two Saxon words *scire* *genepa*, the reeve, bailiff, or officer of the shire.

Blackstone's definition.

He is called in *Latin*, *vice-comes*, as being the deputy of the earl or *comes*; to whom the custody of the shire is said to have been committed at the first division of this kingdom into counties.—But the earls,

Called in Latin
vice-comes.

Sheriff does all
the business of
the county.

Bailiff to the
crown.

An antient
officer, &c.

To answer.

Hundreds not
granted in fee
before Ed. 3.

Shall have the
custody of all
gaols in their
counties.

earls, in process of time, by reason of their high employments, and attendance on the king's person, not being able to transact the business of the county, were delivered of that burden. *Dalt. c. 1.* reserving to themselves the honor, but the labor was laid on the sheriff. So that now the sheriff does all the king's business in the county; and though he be still called vice comes, yet he is entirely independent of, and not subject to the earl; the king by his letters patent committing *custodiam comitatus* to the sheriff, and him alone. He is considered in our books as bailiff to the crown, and his county in which he hath the care, and in which he is to execute the king's writs, is called his bailiwick. *7 Co. 33.* The sheriff is a patent officer of the crown, and is constituted the king's bailiff to gather his rents; and therefore after the said constitution, the first thing is to prefix him a day to account, and there were two days prefixed, one after the *utis* of *Easter*, and the other after the *utis* of *Michaelmas*, and these were called his proffers, because he then did proffer the king's rents, they gave him two times in a year, because the rents were generally payable half yearly. *Gilb. Exc. 146.*

The sheriff is an antient officer, and a minister of the king's county of law and justice; and is to attend at those courts, and execute their process, and make due returns thereof: and he is to answer for the misdemeanors of his bailiffs, who are his servants, and under his government.

All hundreds that were not granted in fee by the crown before the time of *Ed. 3.* are joined to the office of sheriff. *Ray. 361, 362.*

Every sheriff within every county of this realm, shall have the custody, rule, keeping and charge of every the king's common gaols in the county where he is sheriff, except the *marshalsea* and king's bench prison in *Surry*. *19 H. 7. c. 10.* and the *fleet*.

How

How originally chosen.

SHERIFFS were originally chosen by the people in their *folk-mote* or *county court*. *Selden* How chosen originally.
Tit. of Hon. 610. and Lord Coke in his *preface* to
3 Rep. says, they were chosen the same as the cor-
 ner. *2 Inst.* 174. 558. In confirmation of which
 it was ordained, by stat. 28 Ed. 1. c. 28. "that
 "the people should have election of their sheriff in every
 "shire, where the shrievalty is not of fee, if they list."
 For antiently in some counties the sheriffs were Sheriffs heredi-
 tary.
 hereditary, as in Scotland, till the 20 G. 2. c. 43. and
 still continue in the county of *Westmorland* to this
 day^a: the city of *London* having also the inheri-
 tance of the shrievalty of *Middlesex*, vested in their
 body by charter. *3 Rep.* 72. The reason of these
 popular elections is assigned in the same stat. c. 13.
 "that the Commons might chuse such as would
 "not be a burthen to them." And herein appears
 a strong trace of the democratical part of our
 constitution; in which form of government it is
 an indispensable requisite, that the people should
 chuse their own magistrates. *Mont. Sp. L. b. 2.*
c. 2. This election was in all probability not
 absolutely vested in the Commons, but required
 the royal approbation. For in the *Gothic* con- Gothic consti-
 tution, judges
 elected by the
 people.
 stitution, the judges of their county courts (which
 office is executed by our sheriff) were elected by
 the people, but confirmed by the king: and the
 form of their election was thus managed; the peo-
 ple, or *incolæ territorii*, chose twelve electors, and Election thus.
 they nominated three persons *ex quibus rex unum*
confirmabat. *Stiernh. de Jure Goth. l. 1. c. 3.* But
 with us in *England*, these popular elections, grow-
 ing tumultuous, were put an end to by stat. 9 Ed.
 2. ft. 2. which enacted, "that the sheriffs should from
 "thenceforth be assigned by the chancellor, treasurer,
Popular electi-
 ons were put an
 end to, and sher-
 iffs were al-
 signed by the
 chancellor, &c.
^a And it is said *Cumberland* is hereditary by a particular charter
 of king John.

"baron;

The chancellor,
&c. to make
election on the
morrow of All
Souls.

Letters patent.

Chancellor, &c.
to be sworn to
act indifferently
and to name
such only as
they shall judge
best.

Custom of
choosing since
H. 6. and now.

24 G. 2. c. 48.
s. 12.

Sheriffs of Wales,
how appointed.

Custom of pro-
posing three
persons borrow-

"barons of the Exchequer, and by the justices, and
"in the absence of the chancellor, by the treasurer, ba-
"rons, and justices," as being persons in whom the
same trust might with confidence be reposed. By
statutes 14 Ed. 3. c. 7. 23 H. 6. c. 8. and 21 H.
8. c. 20. The chancellor, treasurer, president of the
king's council, chief justices, and chief baron, are to
make this election; and that on the morrow of All
Souls, in the Exchequer. And the king's letters pa-
tent appointing the new sheriffs, used commonly to
bear date the sixth day of November. Stat. 12 Ed.
4. c. 1. The stat. of Cambridge, 12 R. 2. c. 2.
ordains, "that the chancellor, treasurer, keeper of
"the privy seal, steward of the king's house, the
"king's chamberlain, clerk of the rolls, the jus-
"tices of the one bench and the other, barons of
"the Exchequer, and all other that shall be called
"to ordain, name, or make justices of the peace,
"sheriffs, and other officers of the king, shall be
"sworn to act indifferently, and to name no man
"that sueth to be put in office, but such only,
"as they shall judge to be the best and most
"sufficient."

Since the time of Henry the Sixth, the custom
hath been, and now is, "that all the judges, toge-
"ther with the other great officers, meet in the Ex-
"chequer-chamber on the morrow of All Souls yearly,
"(which day is now altered to the morrow of St.
"Martin, by the last act for abbreviating Michael-
"mas term,) and then and there propose three persons
"to the king, who afterwards appoints one of them to
"be the sheriff", by marking each name with a
prick of a pin; and for that reason this particular
election is generally termed, *pricking for sheriffs*.

The sheriffs in every of the shires of Wales shall
be nominated yearly "by the lord president and
"council, and justices of Wales," who are to cer-
tify the names to the lords of the king's council,
that the king may appoint. 34 & 35 H. 8. c. 26 s. 65.

This custom of the twelve judges proposing three
persons, seems borrowed from the Gothic constitu-
tion

tion before mentioned; with this difference, that among the *Goths*, twelve nominors were first elected by the people themselves: which usage of ours was probably founded upon some statute, though not now to be found among our printed laws. — first, because it is materially different from the direction of all the statutes before mentioned; which it is hard to conceive that the judges would have countenanced by their concurrence, or that *Fortescue* would have inserted in his book, unless by the authority of some statute: and also, because a statute is expressly referred to in the record which *Sir Ed. Coke* tells us in 2 *Inst.* 559. he transcribed from the council book of 3d *March*, 34 *H.* 6. and which is in substance as follows. The king had of his own authority appointed a man sheriff of *Lincolnshire*, which office he refused to take upon him: whereupon the opinion of the judges were taken, what should be done in this behalf. And the two chief justices, *Fortescue* and *Prisot*, delivered the unanimous opinion of them all, “that the king did an error when he made a person sheriff, that was not chosen and presented to him according to the statute; that the person refusing was liable to no fine for disobedience, as if he had been one of the three persons chosen according to the tenor of the statute, or that some other thrifty man be intreated to occupy the office for this year; and that the next year, to eschew such inconveniences, the order of the statute in this behalf made be observed.” But notwithstanding this unanimous resolution, and the statute 34 & 35 *H.* 8. c. 26. f. 61. which expressly recognizes this to be the law of the land, some writers have affirmed, *Jenkins*, 229. that the king by his prerogative, may name whom he pleases to be sheriff, whether chosen by the judges or no. This is grounded on a very particular case in the fifth year of queen *Elizabeth*, and reported in *Dyer*, 225. when by reason of the plague, there was no *Michaelmas* term kept at *Westminster*; so that the judges could not meet there in *crastino*

ed from the
Gothic constitution.

Founded upon
some statute.

F. de land. c. 21.

The king appointed a sheriff, which office he refused to take.

The judges opinion.

Queen appointed, and when,

Animarum

and held the
might by her
prerogative.

The practice
of naming a
pocket sheriff
hath continued
to this day.

The office of
sheriff cannot be
apportioned or
divided.

It is intire, and
so must continue
except, &c.

Cannot be de-
termined, until
a new sheriff be
made, except by
death of the
sheriff, not de-
mise of the king.

Nor by becom-
ing a peer.

Animarum to nominate the sheriffs: whereupon the queen named them herself, without such previous assembly, appointing for the most part, one of two remaining in the last year's list. And this case, is the only authority in our books for making these extraordinary sheriffs. The reporter adds, that it was held, "*that the queen by her prerogative might make a sheriff without the election of the judges, non obstante aliquo statuto in contrarium,*" but the doctrine of *non obstante's*, which sets the prerogative above the laws, was effectually demolished by the bill of rights at the revolution, and abdicated *Westminster-hall*, when king *James* abdicated the kingdom. However, it must be acknowledged, that the practice of occasionally naming what are called *pocket sheriffs*, by the sole authority of the crown, hath uniformly continued to the reign of his present majesty, in which few (if any) instances have occurred.

It hath been adjudged, that the office of sheriff is an intire thing, therefore the king cannot apportion or divide it, (although he make or appoint one to be sheriff, *durante bene placito,*) that is, he cannot determine it in part, as for one town, or one hundred; neither can he abridge the sheriff of any thing incident to or belonging to his office. *Davies*, 60. 4 Co. 33. *Dalt.* 6.

The office is intire, and so it must continue in that intirety for the whole county, without any fraction or diminution (except it be by an act of parliament, or that the king shall make some town, &c. a county of itself, and shall appoint *there a sheriff*, and all things belonging to a sheriff within the same town, &c.) *Dalt.* 6.

Neither can the office of a sheriff be determined nor any part thereof, without and until a new sheriff be made for the execution and administration of justice, (except it be by his own death,) for on the demise of the king, "*he may hold his office six months, unless sooner displaced by the successor.*" 1 Ann stat. 1. c. 8. Nor does it determine by becoming a peer

a peer on his father's death. *Cro. Eliz.* 12. pl. 3. 25 *Eliz. C. B. Sir Lewis Mordant's case.* Though the dignity descends in time of parliament, so that he ought to attend parliament as a peer. *Ibid.*

Who are qualified or exempt from Serving.

IT is provided by several acts of parliament, that no man shall be sheriff in any county, (except he have sufficient lands within the same county where he shall be sheriff,) whereof to answer the king and his people, in case that any person shall complain against him; and that no one that is steward or bailiff to a great lord, shall be made sheriff (except he be put forth of service). 9 *Ed.* 2. 2 *Ed.* 3. c. 4. 4 *Ed.* 3. c. 9. 5. *Ed.* 1. 3. 4. *Dalt.* 6.

The king having an interest in every subject, and a right to his service, it is holden, that no man can be exempt from the office of sheriff, but by act of parliament or letters patent. *Sop.* 43. 9 *Co.* 46. b. 1 *Ld. Ray.* 29.

A person excommunicated was held to be no excuse, because he might have removed the disability, 2 *Mod.* 99. But a prisoner for debt is not bound, 2 *Mod.* 305. If he be disabled by a judgment in law, he is excused, *Salk.* 108. 4 *Mod.* 273. *hæc judicium redditur in invitum*; for though his fault or neglect was the occasion of such judgment, yet it is a mark set upon him by the government.

An acting attorney of the Common Pleas was held to be privileged from serving sheriff for the city of *Norwich*, though he was resident in the corporation town, and Lord *Mansfield* stated that he laid great stress upon two precedents of near a century and a half ago; and no instance in contradiction to them. *Officina Brev.* 164 & 174. He said the case of a sheriff of a county at large may possibly be a different case. But I know that barristers are considered as exempt from serving that office;

No man shall be sheriff, except he have lands, &c. to answer the king, &c.

No steward or bailiff of a great lord.

No man exempt, but by act of parliament or letters patent.

Who are exempt and who not.

Attorney exempt from serving the office for a corporation, though resident there.

office: and an attorney might perhaps have the same reason to object to it; though that is not a case so likely to happen. Mr. J. YATES,—If he had left off business, his mere remaining on the roll would be no exemption to him: but it appears that he is and has for twenty years continued an acting attorney of the C. P. This is not a contest merely between the city of *Norwich* and this man. It is a contest between the city of *Norwich* and the court of C. P. It is the privilege of the court that is here in question. It has existed as long as the court, and the crown could not, by a charter granted to a corporation, take it away. The court must have ministers; the attorneys are its minister. The inferior duty to the corporation must give way, where it interferes with the superior duty to the court and to the public. By the charter, the corporation are to choose a fit and proper person. This man is not so. The oath of the corporator must be confined to due elections, and to persons not having a *lawful excuse*. This man *has* a lawful excuse. An attorney shall be exempt from all offices *incompatible* with his attendance in his court. The interest of the kingdom is concerned in this. The king cannot by a local charter take away this privilege. An attorney has this privilege, because he is bound to attend the court of which he is a minister, therefore not within the by-law which makes his attendance requisite in another place, for he cannot be necessarily attendant in both places at the same time. *Mayor of Norwich v. Berry*, 4 Burr. 2109.

Militia officer
excused.

None to be elect-
ed into an office
who has not
taken the sacra-
ment within a
year.

By *stat. 2 Geo. 3. c. 20*. "No person, during
"the time he is acting as a militia officer, shall
"be obliged to serve the office of sheriff."

No person shall be placed or chosen in any
office of mayor, &c. or other office of magistracy,
place, trust, or employment, concerning the go-
vernment of any city, corporation, borough,
cinque port, and their members, or other port
town,

town, that shall not have, *within one year next before such choice*, taken the sacrament according to the rites of the church of *England*: and every such person shall take the oaths of allegiance and supremacy at the time when the oath for the due execution of the office shall be administered. And in default, such choice shall be void. 13 Car. 2. st. 2. c. 1. s. 12.

See 16 Geo. 2. c. 30. s. 3. time enlarged.

Protestant dissenters who are exempted by the toleration act, 1 W. & M. stat. 1. c. 18. from the obligation of complying with the requisition of the corporation act, and who can plead their non-compliance as a reasonable and sufficient excuse, are not compellable to serve this office, nor of course to pay any fine for refusal. *Sir Thomas Harrison, Knight, v. Evans, Brown's Parl. Cas.* 10.

Protestant dissenters exempted by the toleration act, excused.

Of the Sheriffs of London, &c.

BEFORE I proceed further, it may not be improper to take notice of the sheriffs of *London*, who hold the shrievalty of *Middlesex*, granted to the citizens of *London* by charter, of H. 1. at 300*l.* per annum, and confirmed to them by king *John*, with all customs belonging, within the city and without, paying 300*l.* per annum, at the *Easter* and *Michaelmas* Exchequer. *Privil. of London*, 5.

Grant of the shrievalty of *London* and *Middlesex*.

London is a county of itself, 4 Inst. 248. and so long as this city hath been a county of itself, so long there have been sheriffs; for it cannot be a county without sheriffs. Sheriffs of *London* are as two in *London*, but in *Middlesex* they are but as one. 2 Show. 433. *Raymond & others v. Barber*.

London a county.

By an act of common council, dated 7th April, 1748, intitled, "An act for repealing all former acts, orders and ordinances, touching the nomination and election of sheriffs of the city of *London* and county of *Middlesex*; and for regulating and improving such

Act of common council relating to elections of sheriffs of *London*.

Sheriffwicks of the city of London and Middlesex, have belonged to the mayor, &c.

Acts and ordinances proved ineffectual.

Former acts repealed.

Who to elect sheriffs, and when to be the general election day.

"such nominations and elections for the future," reciting, that from time immemorial, there have been, and of right ought to be, two sheriffs of this city, which said two sheriffs, during all the time aforesaid, have constituted, and of right ought to constitute, one sheriff of the county of *Middlesex*. That the sheriffwick of this city, and the sheriffwick of the said county of *Middlesex*, from time immemorial belonged, and do of right belong, to the mayor and commonalty and citizens of the city of *London*. That the several acts, orders, and ordinances, heretofore made and passed in this city, touching the choice or election of persons to the offices of sheriffalty of this city and county of *Middlesex*; and for compelling the persons so chosen or elected, to accept and serve the said offices, have hitherto proved ineffectual to answer the several purposes in and by such acts, orders, and ordinances, expressed or intended. For remedy thereof, be it enacted, and it is hereby enacted and ordained, by the *right honourable* the lord mayor, the *right worshipful* the aldermen and the commons of this city, in this present common council assembled, and by the authority of the same, that all and every the said acts, orders, and ordinances, so far as the same relate to the said offices of sheriffalty, shall from henceforth be, and the same are hereby repealed, annulled, and made utterly void and of none effect. That from henceforth, the right of electing persons to the said offices of sheriffalty shall be, and the same is hereby vested in the liverymen of the several companies of this city, to be for that purpose from time to time assembled in the common-hall of the *Guildhall* of this city; and that the general day of elections of persons to the said offices shall be yearly, the 24th day of *June*, unless the same shall happen to be *Sunday*, in which case, the said election shall be on the day then next following.

That whensoever it shall happen, that any person or persons elected to the said offices of sheriffalty,

alty, shall in any instance refuse or neglect to conform to this act, or shall depart this life, or be lawfully removed or discharged from the said offices, or from his or their respective election thereunto, or that upon any other occasion whatsoever, there shall be just cause to proceed to a new election; then, and in every such case, it shall and may be lawful, to and for the liverymen of the said several companies of this city, duly assembled as aforesaid, to proceed to, and make such *new election at such day and time*, as by the court of lord mayor and aldermen of this city, for the time being, shall be ordered or appointed, any thing to the contrary notwithstanding. That every person who shall hereafter be elected to the said offices of sheriffalty upon the said general election day, or any other time between the said general election day and the 22d day of *September* in the same year, when there shall be no actual vacancy in the said offices, shall take the same upon him on *the vigil of Saint Michael the archangel, next following his said election*, and shall hold the same, for and during the space of one whole year, from thence next ensuing; and that every person who shall be elected to the said offices, on the said 22d day of *September*, or at any time between the said 22d and 28th days of *September*, or upon a vacancy happening in the said offices, or when the sheriffs of this city and county of *Middlesex*, for the time being, or either of them, shall hold over, as is hereinafter mentioned and provided, shall take the said offices upon him, on the 7th day next after notice of his said election, and shall hold the same until the swearing in of the new sheriffs, upon the vigil of *Saint Michael the archangel*, next following the day of his taking the said offices upon him as aforesaid. That if upon any future vigil of *Saint Michael the archangel*, it shall happen, that neither of the said persons elected to the said offices of sheriffalty, shall appear in the *Guild-hall* aforesaid, and take the said offices upon him;

In what instances elections to be on other days.

When persons elected are to take, and how long to hold the office.

In what instances old sheriffs shall hold over.

c

then,

In what order
the old aldermen
to be put up and
take place.

Power to the
lord mayor to
nominate persons,
and how they
shall be put up.

then, and in every such case, both the then sheriffs shall hold over and continue in the said offices, until some other persons shall be duly elected and sworn into the same, in their stead; and if upon any such *vigil*, it shall happen, that only one of the persons elected to the said offices shall so appear, and take the said offices upon him; then, and in every such last-mentioned case, the junior in office of the then sheriffs, shall hold over and continue in the said offices, until some other persons shall be duly elected, and sworn into the same in his stead; any thing, or any law, or custom to the contrary notwithstanding. That from henceforth, at every assembly of the liverymen of the several companies of this city, for the election of a person or persons to the said offices of sheriffalty; every alderman of this city, who shall not actually have served the same, shall, according to his seniority in the said court of lord mayor and aldermen, and before any commoner of this city, be publicly put in nomination for the said offices; and every alderman of this city, who shall be elected to the said offices, shall therein take place according to his seniority in the said court, and have precedence of every commoner of this city.

That from henceforth for ever, it shall and may be lawful to and for the lord mayor of this city for the time being, at such time or times as he shall think proper, between the 14th day of *April* and the 14th day of *June* in every year, to nominate in the said court of lord mayor and aldermen of this city, one or more fit and able person or persons, (not exceeding the number of nine persons in the whole,) being free of this city, to be publicly put in nomination for the said offices of sheriffalty, to the liverymen of the several companies of this city, to be hereafter in the common hall aforefaid assembled, for the election of a person or persons to the said offices, and the person or persons so nominated by any lord mayor of this city, shall at every such assembly of the said livery-

liverymen, after his and their respective nominations by the lord mayor as aforesaid, be publicly put in nomination for the said offices, before any other commoner of this city; and in the same order as he or they shall stand nominated by the lord mayor, until he or they shall respectively have been duly elected to the said offices, or shall have been duly discharged of and from such nomination, in such manner as is hereinafter mentioned.

Provided always, that if any person so nominated by any lord mayor of this city shall, within six days after notice thereof, pay to the chamberlain of this city for the time being, the sum of 400*l.* for the uses hereinafter mentioned, and 20 marks towards the maintenance of the ministers of the several prisons within this city, together with the usual fees, every such person shall be, and is hereby for ever exempted and discharged from such nomination, and from serving the said offices of sheriffalty, unless he shall afterwards take upon him the office of an alderman of this city, in which case, he shall be liable to be elected to the said offices of sheriffalty, such payment of the said sum of 400*l.* and 20 marks notwithstanding.

400*l.* to be paid to discharge persons nominated by the lord mayor.

That at every assembly of the liverymen of the said several companies of this city in the said common-hall assembled, for the election of one or more person or persons to the said offices of sheriffalty, all and every such person or persons being free of this city, and then not exempted or discharged from the said offices, as shall then and there be for that purpose nominated by any two or more of the said liverymen, then and there present, and having a right of voting at such election, shall be publicly put in nomination for the said offices, next after such person or persons as shall have been so nominated for the said offices by any lord mayor of this city, and shall not then have been discharged from such nomination,

In what order persons nominated by two liverymen are to be put up.

(if any such shall then be,) or in default of such person or persons last mentioned, then next after such of the aldermen of this city as shall not have served the said offices.

In what cases, by whom, and how far persons to be excused for insufficiency of wealth,

And by a new act of common council holden 11th of June 1799, it is ordained, that no freeman of this city, who shall hereafter be elected by the said liverymen as aforesaid, or nominated by any lord mayor of this city as aforesaid, to or for the said offices of sheriffalty, shall be discharged from such election or nomination for insufficiency of wealth, unless he shall and do voluntarily take his corporal oath, before the said court of lord mayor and aldermen, *"that he then is not of the value of 20,000 l. in lands, goods, and separate debts, and also unless six other citizens, freemen of this city, to be brought by him, and being of good credit and reputation, such as the said court shall approve of, shall and do likewise, before the same court, voluntarily testify upon their corporal oaths, that in their consciences they believe the said person so elected by the said liverymen, or so nominated by the lord mayor, (as the case shall happen to be,) hath deposed and sworn truly concerning his value as aforesaid,"* in which case, and so often as the same shall happen, the said court of lord mayor and aldermen shall, and may at all times hereafter, discharge any person whatsoever, as well of and from any nomination which shall have been made of him by any lord mayor of this city as aforesaid, as of and from any election which shall have been made of him by the liverymen of the several companies of this city as aforesaid, any thing notwithstanding.

In what instances the persons elected to give bond, and the forfeiture in case of default,

And by the said former act of common council, 7th of April 1748, it is provided and enacted, That every person who shall be elected to the said offices of sheriffalty, upon the said general election-day, or at any other time between the said general election-day, and the 14th day of September in the same year, when there shall be no actual vacancy

vacancy in the said offices, shall personally appear before the said court of lord mayor and aldermen in the inner chamber of the *Guildhall* aforesaid, at the first court there to be holden next after notice of his election, unless such reasonable excuse shall then and there be offered on his behalf, as the said court shall allow; and in case of such excuse allowed, then at such other subsequent court or courts as the said court shall appoint, and shall then and there become bound to the chamberlain of this city for the time being, his executors and administrators, by his bond or obligation, in the penal sum of 1000*l.* with condition there under written, or thereupon indorsed, *"that if he shall personally appear on the vigil of Saint Michael the archangel then next following, between the hours of 12 and 3 of the clock in the afternoon, in the public assembly in the said Guildhall, in the place where the court of Hustings is usually holden, and then and there in the presence of the lord mayor of this city for the time being, and two of the aldermen of this city for the time being, and in case of the absence of the lord mayor, then in the presence of four of the aldermen, take the oath of office, there usually taken by the sheriffs of this city and county of Middlesex, then the said bond or obligation shall be void,"* upon pain that every person so elected who shall not appear and become bound as aforesaid, shall (if an alderman of this city, or a commoner previously nominated by the lord mayor of this city as aforesaid) forfeit and pay to the uses hereinafter mentioned, the sum of 600*l.*, or if he shall not then be an alderman of this city, or a commoner so previously nominated by the lord mayor of this city, the sum of 400*l.*

That if any freeman of this city who shall be duly elected to the said offices of sheriffalty, upon the said 14th day of *September*, or at any other time between the said 14th and 22d days of *September* in the same year, when there shall be no actual vacancy in the said offices, and shall have

Penalties on persons elected on the 14th or between the 14th and 22d of *September*, when no vacancy, who shall not take the said offices in time.

fix days notice thereof as aforesaid, shall not appear on the vigil of *Saint Michael* the archangel, next after such notice, between the hours of 12 and 3, in the public assembly in the *Guildhall* aforesaid, in the place where the said court of *Hustings* is usually holden, and then and there in the presence of the lord mayor of this city for the time being, and two of the aldermen of this city for the time being, or in case of the absence of the lord mayor, then in the presence of four of the aldermen of this city for the time being, take the oath of office there usually taken by the sheriffs of this city and county of *Middlesex*, then and in every such case, such person shall (if an alderman of this city, or if a commoner previously nominated by the lord mayor as aforesaid) forfeit and pay to the uses hereinafter mentioned the sum of 600 *l.*, or if he shall not then be an alderman of this city, or a commoner so nominated by the lord mayor, the sum of 400 *l.*

Penalties on persons elected on the 22d or between the 22d and 28th of September, or in cases of vacancy, or of sheriffs holding over, who shall not take the office in time.

That if any freeman of this city, who shall be duly elected to the said offices of sheriffalty on the said 22d day of *September*, or at any time between the said 22d and 28th of *September*, or upon a vacancy happening in the said offices, or when the sheriffs for the time being, or either of them, shall have held over as aforesaid, shall not personally appear on the 7th day next after notice of his election, between the hours of 12 and 3 in the public assembly at the *Guildhall* aforesaid, in the place where the said court of *Hustings* is usually holden, and then and there, in the presence of the lord mayor of this city, for the time being, and two of the aldermen of this city for the time being, or in case of the absence of the lord mayor, then in the presence of four of the aldermen of this city for the time being, take the oath of office there, usually taken by the sheriffs of this city and county of *Middlesex*, then and in every such case, such person shall (if an alderman of this city, or a commoner previously nominated by the lord mayor

mayor as aforesaid) forfeit and pay to the uses hereinafter mentioned, the sum of 600*l.*, or if he shall not then be an alderman of this city, or a commoner so previously nominated by the lord mayor, the sum of 400*l.*

That all penalties and sums of money to be forfeited by virtue of this act or ordinance, shall be recovered by action of debt, to be commenced and prosecuted in the name of the chamberlain of this city for the time being, in one of the courts of record of the king's majesty, his heirs and successors, within this city, where no essoin or wager of law shall be admitted or allowed for the defendant; and that the chamberlain of the city for the time being, in all such actions to be prosecuted by virtue of this act, wherein he shall obtain judgment by verdict, *nil dicit*, or confession, or upon demurrer, shall and may recover his costs of suit, and if a verdict shall be given for the defendant, or if the plaintiff shall be non-suited, or discontinue his action after the defendant shall have appeared, or if upon demurrer, judgment shall be given against the plaintiff, the defendant or defendants shall and may recover costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases by law.

That if it shall happen that two or more persons nominated by any lord mayor or lord mayors of this city, for the said offices of sheriffalty, shall between the 14th of *April* and the 24th of *June*, in any one year, pay unto the chamberlain of this city for the time being, the sum of 400*l.* to be exempted and discharged from their said nomination, and from serving the said office according to the proviso for that purpose hereinbefore contained, then, and in every such case, the said chamberlain for the time being shall, out of the monies so paid to him, issue and pay the sum of 100*l.* to each of the two persons who upon the vigil of *Saint Michael* the archangel in that year, or at any other time thereafter, shall first and next take the

How penalties
are to be recovered.

5 Mod. 478.
Car b. 480a

In what cases
the sheriffs to
have part of the
fines, and how
the rest of the
fines and forfeit-
ures to be ap-
plied.

said offices upon them; and if it shall happen that only one person so nominated by any lord mayor, shall pay the said sum of 400*l.* within the time, and for the purpose aforesaid, then and in every such last-mentioned case, the said chamberlain for the time being, shall thereout issue and pay the sum of 50*l.* to each of the two persons who upon the said vigil in that year, or at any other time hereafter, shall first and next take the said offices upon them; and that the residue of all and every the sums of 400*l.* which shall hereafter be paid to the chamberlain of this city for the time being, within the time, and for the purpose aforesaid, and also all penalties and sums of money to be forfeited and paid, by virtue of, and in pursuance of this act, shall go and be applied to the use of the said mayor and commonalty, and citizens of the city of *London*, subject to such orders and resolutions of this court, as have hitherto been made touching the monies paid into the chamber of *London* as a fine for not holding the said offices, and to such further orders and resolutions of this court as shall hereafter be made touching the same.

No person who has fined upon any former acts to be eligible.

That every person who hath at any time heretofore paid to the chamberlain of this city for the time being, for the use of the mayor and commonalty and citizens of the same city, any sum of money to be exempted or discharged from the said offices of sheriffalty, shall be, and is hereby forever exempted, and absolutely discharged from the said offices of sheriffalty, unless such person shall at any time hereafter take upon him the office of an alderman of this city, in which case he shall be, and is hereby declared to be subject and liable to be elected to the said offices, such payment or any thing to the contrary notwithstanding.

No person to serve a second time.

That no person who now hath, or hereafter shall have, duly served the said offices of sheriffalty of this city and county of *Middlesex*, according to the true intent and meaning of this present act,
or

or of any former act of common council, shall hereafter be eligible to the said offices a second time, any thing contained to the contrary notwithstanding.

The Oath of the Sheriff.

“YE shall swear, that ye shall be good and true unto our sovereign lord the king of England, and unto his heirs and successors; and the franchise of the city of London, within and without, ye shall save and maintain to your power; and ye shall well and lawfully keep the shires of London and Middlesex, and the offices that to the same shires appertain to be done well and lawfully, ye shall do after your wit and power; and right ye shall do, as well to poor as rich, and good custom you shall none break, ne evil custom arrere, and the assize bread, all, and all other victuals within the franchise of this city, and without, well and lawfully ye shall keep, and do to be kept, and the judgements and executions of your court, ye shall not tarry without cause reasonable; ne right shall you none disturb. The writs that to you come touching the state and franchise of this city, you shall not return, till you have shewed them to the mayor and the council of this city, for the time being, and of them have advisement, and ready you shall be at reasonable warning of the mayor, for keeping of the peace, and maintaining the state of this city; and all other things that longen to your office, and the keeping of the said shires, lawfully you shall do, by you and yours; and the city you shall keep from harm after your power, and the shire of Middlesex; ne the goal of Newgate you shall not let to farm. *As help you God.*”

The oath of the
sheriffs of Lon-
don.

Addition.

SHERIFFS OF LONDON.

Addition.

“YE shall also swear, that ye shall freely
“ give all such rooms and offices of ser-
“ jeants and yeomen, as shall happen to become
“ void during the time ye shall remain in the of-
“ fice of sheriffalty, to such apt and able person
“ and persons, as shall be by you nominated to
“ the lord mayor and court of aldermen, and by
“ them admitted, without any money or other re-
“ ward to be had, taken or hoped for in respect
“ thereof, according to the act of common coun-
“ cil made and provided in that behalf, the nine
“ and twentieth day of *April*, in the six and
“ twentieth year of the reign of our sovereign
“ lady queen *Elizabeth*, &c. *As God you help.*”

To attend, to be
sworn in.

The sheriffs are to attend on *Michaelmas* day at *Guildhall* to be sworn in; in the evening to take by indenture the prisoners in *Newgate* on the *Middlesex* side, and by inrollment on the *London* side, of *Ludgate*, *Poultry*, and *Wood-street Compters*, and at the same time execute the grants to the keepers of *Ludgate* and *Newgate*.

The keepers of *Ludgate* and *Newgate*, as well as the serjeants at mace, execute their securities in the morning.

The next day the sheriffs attend at the exchequer, before the curfitor baron, to be sworn to answer and pay the fees, &c.

On the morrow after *Low Sunday*, to attend at the exchequer and have ready the exchequer cloths, (which are provided ready, and 40s. by tally for the proffers for the liberties and franchises of *London* and *Middlesex* for half a year then ended, a public breakfast is prepared for the curfitor baron and clerks).

The like payment is to be made on the morrow after *Michaelmas* day; in default of which, the liberties and franchises of the city are liable to forfeiture.

forfeiture. Herrings are provided by the sheriffs for the officers of the court as a breakfast this day.

In *Michaelmas* term to present the barons and officers with 42 loaves of fine sugar, *viz.*

- 6 to the chief baron,
- 6 to the curfitor baron,
- 12 to the pipe office,
- 12 to the secondaries,
- 6 to the under-sheriffs.

42

The serjeants and yeomen had formerly at *Serjeants and Christmas* winter liveries, and at *Midsummer* summer liveries, which are now reduced to one livery, and in lieu thereof, the serjeants are paid 33s. and 4d. a-piece, and the yeomen 30s. a piece.

The sheriff shall put his name to the return *Returns.* *stat. 12. Ed. 2. 5.* and in *London*, where there are two persons, both ought to put their names, for they are but one sheriff. *Hob. 70. 39 H. 6. 41. So of Coroners.*

Where one of the sheriffs of *London* dies, the other cannot act, because he is no sheriff, but must wait until another be chosen; for there must be two sheriffs of *London*, which is a city and county. But one sheriff of *Middlesex* which is only a county. *Show. Rep. 289.*

When one dies the other cannot act.

N. B. *London* had no sheriffs in the 13 of *Ed. 1. 1 Leon. 284.*

A man was arraigned and condemned of felony, and was imprisoned in *Newgate*, at the goal delivery for *Middlesex*, and after a writ of execution for debt issues against him out of the exchequer upon a recovery against the party (the felon) directed to the sheriffs of *London* who serve the execution upon the body of the prisoner in *Newgate*, and after the felon was pardoned of the felony, it became a question whether the execution was lawful? and if it was, then whether the pardon had not discharged it? First, by all the barons, the execution

A man condemned in execution for debt, execution issues, sheriffs of *London* serve it, the man pardoned, whether execution be lawful.

Held by the barons not lawful, because he was of the *Middlesex* side.

execution served by the sheriffs of *London* by force of a *capias* directed to the sheriffs of *London* was not lawful, because the party was in prison in the goal of *Middlesex*; and although *Newgate* was within *London*, yet is a prison indifferent for both counties, and the prisoner was in the prison for *Middlesex*, and not for *London*; and the process ought to have been directed to the sheriff of *Middlesex*: Secondly, The sheriff may chuse to serve the execution or not, upon the body of the felon for debt; for that inasmuch the king by the judgment of the felony hath interest in his person, this interest is sufficient privilege against the action, or execution of any subject; yet if the sheriff will serve the execution, then the prisoner shall be said to be in execution for the debt, and yet subject to the judgment of felony for the king; and if the felon escape, the sheriff shall answer to the king and the party also, and if the king pardon the felony, and the sheriff suffers him to go at large, it is an escape.

The sheriff may chuse to serve the execution or not,

yet if he will serve it, held good, and liable to an escape.

On ca. sa. to the sheriff of *Middlesex* if he take him, and after another, to the sheriffs of *London*, he shall not be charged in *London*.

Commitment by sheriff of *Middlesex*, is not a commitment in *London*, though the sheriffs of *London* and *Middlesex* are one.

If sheriff does not take on him the office, how

That upon a ca. sa. to the sheriff of *Middlesex* to take J. S. if the sheriff take him and put him in *Newgate*, which is the common prison for *London* and *Middlesex*, and after, another writ of execution comes to the sheriffs of *London*; although the sheriffs of *London* are also sheriff of *Middlesex*, and *Newgate* (where the prison is) is the prison for both counties; yet the prisoner shall not be said to be in execution upon this new writ in *London*, nor may the sheriff of *London* serve it upon him, because he is in another county. For when the commitment is to *Newgate* by force of a writ directed to the sheriff of *Middlesex*, he may not be said in any respect to be in the city of *London*; for the counties continue several, and the prison several, in respect of the several commitments: for there are two several sides and a partition between them, 1 *Roll. Abr.* 894. *Coad's case*.

Formerly, if a person refused to take upon him the office of sheriff, it was usual to punish him in

the star chamber; and he may now be proceeded against by information of the court of king's bench. Also, if he refuses to take the oaths enjoined him, or officiates in the office before he hath qualified himself, that court (which hath a general superintendency over all officers and ministers of justice) will grant an information against him: And it hath been held, that a refusal of oaths enjoined to be taken, amounts to a refusal of the office.
 3 *Lev.* 116. *Cartb.* 307.

punished formerly, and how now.

The vast expence, which custom had introduced in serving the office of high sheriff, was grown such a burthen to the subject, that it was enacted by the statute 13 & 14 *Car. 2. c. 21.*

No sheriff to keep any table for the judges.

"That no sheriff should keep any table at the assizes, (except for his own family,) or give any presents to the judges or their servants, or have more than 40 *men in livery*: Yet, for the sake of safety and decency, he may not have less than 20 *men in England*, and 12 *in Wales*; upon forfeiture in any of these cases of 200 *l.*"

This act not to extend to the sheriffs of *London* and *Middlesex*, the sheriff of *Westmerland*, or any sheriff of any city and county, or town and county within this realm, but they shall do as heretofore hath been there used and accustomed.

Having now shewn how sheriffs of counties are nominated, as well as the election of sheriffs for the city of *London*, who have the sheriffwick of *Middlesex* and the exemption; I shall next proceed to shew, how a sheriff is to obtain his patent from the king, who commits to him the custody of the county, &c.

How to procure the patent for the new Sheriff, Writ of discharge of the old Sheriff, and placing the new Sheriff in office.

He must give security in the court of exchequer.

THE first thing that every new elected sheriff must do at the entrance into his office is, that before he receives his patent, and before he exercises any part of his office, he must put in sufficient sureties, by himself, or by his *deputy* or deputies, into the king's exchequer, and there enter into recognizance in such sum, and upon such conditions, as the *lord treasurer* and the *barons* of the *exchequer* shall think meet, stat. 2 & 3 Ed. 6. c. 34. (a)

This is done by an application to one of the clerks in court in the exchequer, who will draw up such recognizance, with condition for payment of his proffers and accounts, and the appointment of a sufficient under-sheriff for execution of process; which recognizance is to be taken to the chief, or any one of the barons, with two sureties, who there enter into the recognizance of 200 l. each. After the recognizance is entered into, the clerk gives you a note to one of the six clerks of the court of chancery, wherein he certifies that the sheriff hath entered into the usual recognizance. Take same to Mr. Bateman, at the six clerks' office over the inrollment office in *Chancery Lane*, deputy to the six clerks, who will make out the patent of office, the writ of discharge to the old sheriff, and the patent of assistance, with a writ of *dedimus potestatem* directed to proper commissioners (generally a knight or two clergymen, or two justices of peace with two others) to take the oath of office annexed thereto, and also of allegiance and abjuration pursuant to the statute 1 Geo. 1. c. 13.: when done, the commissioners must certify the same into the court of chancery, which is filed in the petty bag

(a) The sheriff need not be present.

office

office in the rolls yard, which certificate is indorsed on the *dedimus*, as follows:

By virtue of this writ to us directed, (to wit,) Return of *dedimus*.
on the day of in the year within
mentioned, the within named *A. B.* Esq; sheriff
of the county of , took the oath of
office, as well as the several other oaths in the
schedule to this writ annexed, in our presence, as
within he is required to do. The answer of

F. B. { Commissioners.
M. D. {

By the 3 Geo. 1. c. 15. s. 18. it is enacted,
“ That instead of the oath usually administered to
“ sheriffs, at the entering upon their offices, the
“ following oath shall be taken by them, and
“ each of them respectively, (excepting the she-
“ riffs of the several counties in *Wales*, and of
“ the county palatine of *Chester*, viz. *I A. B. do* Oath of the high
sheriff.
“ swear, that I will well and truly serve the king’s
“ majesty in the office of sheriff of the county of
“ , and promote his majesty’s profit in all
“ things that belong to my office, as far as I legally can
“ or may; I will truly preserve the king’s rights, and
“ all that belongeth to the crown; I will not assent
“ to decrease, lessen, or conceal the king’s rights, or
“ the rights of his franchises; and whensoever I shall
“ have knowledge, that the rights of the crown are
“ concealed or withdrawn, be it in lands, rents,
“ franchises, suits or services, or in any other matter
“ or thing, I will do my utmost to make them be restor-
“ ed to the crown again; and I may not do it myself.
“ I will certify and inform the king thereof, or some
“ of his judges; I will not respite or delay to levy the
“ king’s debts for any gift, promise, reward or favour,
“ where I may raise the same without grievance to the
“ debtors; I will do right as well to poor as to rich,
“ in all things belonging to my office: I will do no
“ wrong to any man, for any gift, reward or promise,
“ nor for favour or hatred; I will disturb no man’s
“ right, and will truly and faithfully acquit at the
“ exchequer, all those of whom I shall receive any
“ debts

“ debts or duties belonging to the crown; I will take
 “ nothing whereby the king may lose, or whereby his
 “ right may be disturbed, injured or delayed; I will
 “ truly return, and truly serve all the king’s writs,
 “ according to the best of my skill and knowledge; I
 “ will take no bailiffs into my service, but such as I
 “ will answer for, and I will cause each of them to take
 “ such oaths as I do, in what belongeth to their busi-
 “ ness and occupation; I will truly set and return
 “ reasonable and due issues of them that be within my
 “ bailiffwick, according to their estates and circum-
 “ stances, and make due panels of persons able and
 “ sufficient, and not suspected or procured, as is ap-
 “ pointed by the statute of this realm; I have not sold
 “ or let to farm, or contracted for, nor have I granted
 “ or promised for reward or benefit, nor will I sell
 “ or let to farm, nor contract for, or grant for
 “ reward or benefit, by myself, or any other person for
 “ me, or for my use, directly or indirectly, my sheriff-
 “ wick or any bailiwick thereof, or any office belonging
 “ thereunto, or the profits of the same, to any person
 “ or persons whatsoever; I will truly and diligently
 “ execute the good laws and statutes of this realm;
 “ and in all things well and truly behave myself in my
 “ office for the honour of the king, and the good of
 “ his subjects, and discharge the same according to the
 “ best of my skill and power. So help me God.”

Which oath is enacted to be administered and
 given by such commissioners as shall be named and
 authorised to administer the foregoing oath to the
 high sheriff in the county, when and so often as
 a commission or *dedimus* shall be sued forth of the
 proper court for that purpose, or by the barons of
 the said court, or one of them, when the said sheriff
 desires to be sworn in town.

Sheriff to take
 the oaths of al-
 legiance, supre-
 macy, and abjura-
 tion, in one of
 the courts at *W.*
 or the quarter
 session.

The sheriff shall, within six calendar months
 after his election, take and subscribe the oaths of
allegiance, supremacy, and abjuration, in one of the
 courts at *Westminster*, or at the *general or quarter*
session of the place where he shall be or reside, be-
 tween

tween the hours of nine and twelve in the forenoon, and no other. *Stat. 1 Geo. stat. 2. c. 13. f. 2. 2 Geo. 2. c. 31. f. 3. 4. 9 Geo. 2. c. 26. f. 3.*

And the sheriff shall within three months after election receive the sacrament, &c. in some public church on the Lord's day, and in the court where he takes the oaths of allegiance, &c. he shall first deliver a certificate of receiving the sacrament under the hand of the minister and churchwarden, and shall then make proof thereof by two witnesses on oath; also when he takes the said oaths, make and subscribe the declaration against transubstantiation. *25 Car. 2. c. 2. f. 2. 3. 9.* But now the time is enlarged to *six months* after admittance and receiving the authority. By *stat. 16 Geo. 2. c. 30. f. 3.* and the not complying shall incur all the disabilities of *25 Car. 2.*

To receive the sacrament and subscribe declaration, &c. within three months.

Enlarged to six months.

The sheriffs of *Wales and Chester* shall not be obliged to take the said oaths, but shall take the accustomed oath as formerly, except the words following, viz. "*Ye shall be dwelling in your own proper person, within your bailiwick for the time ye shall continue in the same office, except ye be otherwise licensed by the king,*" which words shall hereafter be left out. *3 Geo. 1. c. 15. f. 22.*

Wales and Chester not obliged to take the oaths. by *3 G. 1. c. 15.*

Nor is it to extend to the sheriffs of *London and Middlesex*, the county palatine of *Durham*, the county of *Westmorland*, or to the sheriffs of any city or town being a county of itself, as to their placing in or disposing of any of the offices of their under-sheriffs, county clerks, bailiffs, or other officers, or their continuance therein. *Stat. 23.*

Not to extend to *London and Middlesex, Durham, Westmorland, and other citia.*

After the sheriff hath taken the oaths before mentioned, then on the writ of discharge being delivered to his predecessor, the old sheriff or his under-sheriff, (or at or before the first county court to be kept by the new sheriff,) the new sheriff must take over from the old sheriff, all his prisoners, (which are in the gaol by their names,) and all his writs precisely by view, and by indenture to be made between the old and new sheriff;

He must take by indenture the prisoners and writs.

in which indenture, all the causes which the old sheriff hath against every prisoner must be set forth, and delivered, at the peril of the old sheriff, or else the new sheriff need not take any notice of any thing omitted and left out of the indenture; for he is not chargeable with it, but the old sheriff. *3 Co. 72. Westlie's case. Dalt. 15.*

When the antient sheriff discharged.

The antient sheriff is not discharged, nor the new sheriff charged, till three things are done, viz. *the patent to the new sheriff, the writ of discharge to the old sheriff, and the delivery of the prisoners by indenture to the new sheriff. Cro. Eliz. 366. Westly v. Skinner, Noy 51.*

Writs to be turned over to the succeeding sheriff by indenture.

By statute 20 Geo. 2. c. 37. "All sheriffs shall, at the expiration of their office, turn over to the succeeding sheriff, by indenture and schedule, all such writs and process as remain in their hands unexecuted, who shall execute and return the same; and in case any sheriff neglect to turn over such process, he shall be liable to make satisfaction by damage and costs to the party aggrieved." *Stat. 1.*

Not bound to receive prisoners, but at the gaol.

The new sheriff is not bound to receive the prisoners from the old sheriff, but only at the gaol, and in no other place; and yet, if the old sheriff shall deliver his prisoners to his successor when he is chosen, who receives them out of the gaol, the old sheriff shall be discharged by this delivery. *Dalt. 16.*

He must read his patent at first county court, and appoint county clerk,

The new sheriff at the first county court which shall be after his election, and the discharge of the old sheriff, must read, or cause to be read, his *patent and writ of assistance*; and also nominate his *under-sheriff*, (or county clerk,) and depute, appoint, and proclaim *four deputies* (at the least) in that county, to make replevins for the ease of the county; which deputies ought to dwell not past *twelve miles* distant one from another, in every quarter of the county one, to grant replevins in the sheriff's name, and to make deliverance of distresses, when need shall require.

and four deputies to make replevins. *Dalt. 19.*

And

And they shall, in the sheriff's name, make replevins, as the sheriff himself may do. 1 & 2 *Phil. & M. c.* 12. And the sheriff for every month that he shall lack such deputies, shall forfeit 5 *l.* and within two months next after he hath received his patent, he may appoint such deputies, &c. *Ibid.*

It is holden that a sheriff cannot be elected knight of the shire for that county for which he is sheriff, 4 *Inst.* 48. *Lut. Rep.* 326. And by statute 1 *Mar. stat.* 2. *c.* 8. *f.* 2. although a sheriff is by virtue of his office, a conservator of the peace, yet it is enacted, "that no person having the office of sheriff of any county, shall exercise the office of justice of the peace in any county where he shall be sheriff during the time he shall use the office of sheriff: And all and every acts to be done by any sheriff, by authority of any commission of the peace, during the time of his sheriffwick shall be void. But when he is out of office, he may act by force of the same commission." *Dalt.* 27.

Sheriff cannot be elected a knight of the shire for that county he is sheriff of, nor act as a justice of peace.

By the 14 *E.* 3. *c.* 7. it is enacted, "That no sheriff, &c. shall tarry or abide in his office above one year, on pain to forfeit 200 *l.* yearly, as long as he occupieth the office; and that every pardon for such offence or forfeiture shall be void; and letters patent made to occupy such office above one year, shall be void; any words or clause of *non obstante*, put into such patent notwithstanding; and that whosoever shall presume to take upon himself the office of a sheriff above one year, by force of such letters patent, shall be disabled from ever after to be sheriff within any county of *England*." *Vide* 23 *H.* 6. *c.* 8. 6 *H.* 8. *c.* 18. 42 *Ed.* 3. *c.* 9.

How long to continue in his office.

23 *H.* 6. *c.* 3.
8 *Ed.* 4. *c.* 4.

If a new sheriff hath not his patent ready, and does not take the oaths, &c. every old sheriff may occupy his office during the term of *St. Michael* and *Hilary*, (after the year that their office is ended,)

If new sheriff hath not his patent ready, old sheriff to hold over.

ed,) unless he be lawfully discharged. 12 E. 4. c. 1.
17 Ed. 4. c. 6. *Crom.* 208. 23 H. 6. 38.

Sheriffs of *London*, &c. excepted.

But the sheriffs and under-sheriffs within the city of *London*, and of such counties, in which they be inheritable to the office of sheriff, are excepted. 23 H. 6. c. 7.

Sheriff dying before his office expired, his under-sheriff, or deputy, shall continue in office, and execute the same in the deceased sheriff's name, till a new sheriff sworn, and be answerable, and the security given by the under-sheriff to the deceased sheriff, is to continue during the interval,

By statute 3 *Geo.* 1. c. 15. s. 8. It is enacted,
“ That if any high-sheriff of any county of
“ *England* or *Wales*, shall happen to die before the
“ expiration or determination of his year, or
“ before he be lawfully superseded; in such case,
“ the under-sheriff or deputy sheriff, by him appointed, shall nevertheless continue in his office,
“ and shall execute the same, and all things belonging thereunto, *in the name of the deceased sheriff*, until another sheriff be appointed for the
“ said county, and sworn as directed; and the
“ said under-sheriff, or deputy sheriff, shall be answerable for the execution of the said office
“ in all things, and to all respects, intents and
“ purposes whatsoever, during such interval,
“ as the high-sheriff so deceased, would by law
“ have been, if he had been living; and the security given to the high-sheriff so deceased by
“ the said under-sheriff, and his pledges, shall
“ stand, remain, and be a security to the king,
“ his heirs and successors, and to all persons
“ whatsoever, for such under-sheriff's due performance of his office during such interval.”

None that hath been sheriff, shall be again in three years.

By statute 1 *Ric.* 2. c. 11. it is ordained,
“ That none that hath been sheriff of any county
“ by one whole year, shall be within three years next
“ ensuing, chosen again, or put in the same office
“ of sheriff, if there be other sufficient in the said
“ county, of possessions and goods to answer to the
“ king and his people.” 14 Ed. 3. stat. 1. c. 7.
42 Ed. 3. c. 9. 23 H. 6. c. 8.

To abide in proper person in his county.

By statute 23 H. 6. c. 10. every sheriff shall abide in his proper person within his bailiwick, for the time he shall be such officer, (except he be otherwise licensed by the king,) and that the said

said sheriff be sworn to do the same in special. But now this latter part is left out in the oath. *Vide 3. Geo. 1. c. 15.*

Hence, it is clear, that a sheriff hath no jurisdiction in any other county, nor can he do a judicial act and in which his personal presence is required, out of his county; but it is held, he may a ministerial act, as make a panel, or return a writ out of his county. 9 *H. 4. c. 1. Dalt. 22.* or assign a bail-bond. But, if he be beyond sea, and make a panel or any return there, and sends it into *England*, it is not good, for he is an officer but only in *England*. *Ibid.*

Hath no jurisdiction out of his county.

If on a *habeas corpus*, &c. the sheriff is commanded to carry a prisoner to a certain place out of his county, and in doing this, he is obliged to go through several counties, to this special purpose he hath authority in these other counties. *Dalt. 23.*

If on *habeas corpus*, he is commanded to take a prisoner to a place out of his county, and goes through several counties he hath authority.

So, if a prisoner of his own wrong, shall make an escape, and fly into another county, the sheriff or his officers, upon fresh suit, may take him again in another county. *Plow. 37. Dalt. 23.*

So, if a prisoner escape, the sheriff may take him in another county.

No sheriff shall assign, grant, or let to farm his office in any manner, nor his county, nor any of his bailiwicks, hundreds, nor wapentakes; (nor any of his courts it seems) nor any part thereof, upon pain to forfeit 40*l.* 23 *H. 6. c. 9. f. 2. 4 H. 4. c. 5.*

Cannot dispose of his bailiwick.

In construction hereof, it hath been holden, that this is a particular law, and must be pleaded, otherwise the judges cannot take notice of it.

Construction.

3 *Keb. 678. Ellis v. Nelson.*

It hath been holden, that a lease thereof, though no rent was ever reserved, is within the statute, the intent thereof being, that sheriffs should keep their counties in their own hands. 20 *H. 7. 13.*

Lease of rent, though no part reserved, is within the statute.

Dalt. c. 20. &c. B. R. Grants, 39.

It seems the better opinion, that a lease reserving only part of the profits, is also within the statute. *Plow. 27. Dalt. 23.*

Lease reserving part.

By parol doubted.

But it hath been doubted, whether a lease made by the sheriff of his office or county only by parol, be within the statute. *Dalt.* 24.

Penalty of buying or selling any office under a sheriff.

By 3 *Geo.* 1. c. 11. s. 15. "It shall not be lawful for any person to buy, sell, lett, or take to farm, the office of under-sheriff, or deputy sheriff, seal keeper, county clerk, shire clerk, gaoler, bailiff, or any other office pertaining to the office of high-sheriff, or to contract for any of the said offices, on forfeiture of 500*l.* one moiety to his majesty, the other to such as shall sue in any court at *Westminster* within two years after

Proviso, not to hinder him from constituting an under-sheriff, &c. nor an under-sheriff acting as high-sheriff on his death, from appointing a deputy, nor from taking the fees of their office or security for answering the same, nor discharge any officer from accounting, &c. for fees, nor hinder the sheriff from allowing salaries, nor any of them from receiving the same.

the offence. Provided, that nothing in this act shall hinder any high-sheriff from constituting an under-sheriff or a deputy sheriff, as by law he may; nor to hinder the under-sheriff, in case of the high-sheriff's death, when he acts as high-sheriff, from constituting a deputy; nor to hinder such sheriff or under sheriff from receiving the lawful fees of his office, or from taking security for the due answering the same; nor to hinder such under-sheriff, deputy sheriff, seal keeper, &c. from accounting to the high-sheriff for all such lawful fees as shall be by them taken, nor for giving security so to do; nor to hinder the high-sheriff from allowing a salary to his under-sheriff, deputy sheriff, seal keeper, county clerk, shire clerk, gaoler, bailiff, or other officer, for the execution of the said offices, places or employments, or any of them, as to him shall seem meet; nor to hinder or prevent the under-sheriff, &c. from taking or receiving such salary or recompence for his or their pains and services therein. s. 11.

The Condition of Recognizance.

THE condition is, that if the sheriff do on the morrow of the close of *Easter*, and *St. Michael* the archangel next, make his proffers of the issues of his bailiwick, to as great sums or better as any of his predecessors late sheriffs of the said county have done, at any time of the said morrows, in any of the four years last past; and also if the said sheriff shall personally appear before the barons of this court in *fifteen days from the day of Saint Hilary* 1800, to yield to his majesty a true and faithful account of the issues and profits of his bailiwick, and do finish the same account, and pay all that shall be due thereon, before the morrow of the Ascension then next following, or shall otherwise lawfully discharge himself thereof: and if he the said sheriff shall have and assign his able and sufficient attorney or deputy in this court, the same court sitting who shall attend the court from time to time to receive and return the writs and commandments of the same court, according to the statute in that behalf provided; then this recognizance to be void, or else to remain in full force and virtue.

George the third, &c. To all to whom these
our letters patent shall come greeting: *Know ye* that
we have committed to our well beloved *John Denn*
esquire, the custody of our county of *Berks*, with
the appurtenances, during our pleasure, so that he
annually render unto us our due farms, and answer
to us touching our dues and all other matters con-
cerning the office of sheriff of the county aforesaid,
in our court of exchequer. In witness whereof
we have caused these our letters to be made patent:
Witness ourself at *Westminster*, the day of
in the thirty-ninth year of our reign.

George, &c. To our beloved *Thomas Woodcock*
esquire, late sheriff of our county of *Berks*, greet-
ing: *Whereas* we have committed to our beloved

The patent of
office of sheriff.

Stamp. 24.

The writ of
discharge.

John Denn esquire, the custody of our said county, with the appurtenances, to hold the same during our pleasure, as by our letters patent to him thereof made more fully appears: we command you, that you deliver to the said *John Denn* our aforesaid county with the appurtenances, together with the rolls, writs, memorandums, and all other things belonging to the office of sheriff of the said county, which are in your custody, by indenture duly executed between you and the said *John Denn*. Witness ourself at *Westminster*, the day of in the thirty-ninth year of our reign.

Patent of assistance.

George the third, by the grace of God, &c. To archbishops, bishops, dukes, earls, barons, knights, freeholders, and all others of our county of *Berks*, greeting: *Whereas* we have committed to our well-beloved *John Denn* esq; the custody of our said county, with the appurtenances, during our pleasure, as by our letters patent to him thereof made more fully appears: we command you, that ye be aiding, answering, and assisting to the said *John Denn* as our sheriff of our said county in all things which appertain to the said office. In witness whereof we have caused these our letters to be made patent. Witness ourself at *Westminster*, the day of in the thirty-ninth year of our reign.

The High-Sheriff's Power and Duty; and also of appointing an Under-sheriff and other Deputies.

Importance to have sheriff appointed.

IT is of the utmost importance to have the sheriff appointed according to law, when we consider his power and duty. These are either *as a judge*, as the *keeper of the king's peace*, as a *ministerial officer* of the *superior courts of justice*, or as the *king's bailiff*.

Judicial capacity.

In his *judicial capacity* he is to hear and determine all causes of forty shillings value and under, in his county court, and he has also a judicial power in
divers

divers other civil cases: In a writ of redisseisin, the sheriff acts as judge, as well as a minister; so in inquiry of waste, and admeasurement of pasture, when he executes his *judicial* authority, he must do it in person, and it is not sufficient by the undersheriff, or other deputy. *Com. Dig.* vol. 5. 595.

As the *keeper of the king's peace*, both by common and special commission, he is the first man in the county, and superior in rank to any nobleman therein, during his office, 1 *Roll. Rep.* 237. He may apprehend, and commit to prison, all persons who break the peace, or attempt to break it; and may bind any one in a recognizance to keep the king's peace. He may, and is bound *ex officio* to pursue, and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody. He is also to defend his county against any of the king's enemies when they come into the land: And for this purpose, as well as for keeping the peace, and pursuing felons, he may command all the people of his county to attend him; which is called the *posse comitatus*, or power of the county. *Dalt. c.* 95. which summons, every person above fifteen years old, and under the degree of a peer, is bound to attend upon warning, *Lamb. Eiren.* 315. under pain of fine and imprisonment, 2 *H. 5. c.* 8. But though the sheriff is thus the principal conservator of the peace in his county; yet, by the express directions of the great charter, cap. 17. he, together with the constable, coroner, and certain other officers of the king, are *forbidden to hold any pleas of the crown*, or in other words, *to try any criminal offence*. For it would be highly unbecoming, that the executioners of justice, should be also the judges; should impose, as well as levy, fines and amercements; should one day condemn a man to death, and personally execute him the next. Neither, as has been said before, may he act as an *ordinary justice of the peace within his county*, during the time he acts as a sheriff. *Stat. 1 M. Sess. 2. c.* 8.

As keeper of the king's peace.

Posse comitatus.

Persons above fifteen to attend.

Cannot hold pleas of the crown.
Reason,

In

No need of special indictment.

thereof, the defendant shall not have advantage of such error, no more than a sheriff who suffers a prisoner to escape, shall take any advantage of error thereby. And, in this case, there needs not a special indictment to be drawn; but a general indictment, that such a party of his malice aforethought struck, &c. for the law presumes malice, though none be proved; so it is, if any shall come in aid of them. And an officer, if he be resisted, is not bound to fly to the wall, as other subjects are. *Cro. Jac.* 280. *pl.* 13. *9 Rep.* 66.

Every man is bound to assist.

Every man is bound by the common law to assist, not only the sheriff in his office for the execution of the king's writs according to law; but also his bailiff that hath the sheriff's warrant in that behalf, hath the same authority which his master hath: For the sheriff cannot do all himself, and if they do it not, being required, they shall be fined and imprisoned. *2 Inst.* 193. But before the sheriff uses force, he ought to demand the goods to be delivered, for force ought to follow, not precede the law. *Ibid.*

Before he uses force, &c.

Sheriff guilty of homicide if he does not observe the order of law in putting a man to death.

Though the sheriff be so much favoured and respected in the law, and in the very execution of criminals; yet he shall be guilty of homicide, for not observing the order of law in putting a condemned man to death. *3 Inst. c.* 7. *p.* 52. *H. H. P. C.* 433. 454. 456. *Foss. Cr. Law* 267. *25 G. 2. c.* 37.

If he seizes goods pays part, and goes out of office he may sell without vend. expon.

If the sheriff seize goods in his hands to the value of the debt, and pays part, and is discharged from his office without having sold the rest of the goods, or having returned his writ, that notwithstanding such discharge, and without any writ of *venditioni exponas*, he may sell the goods remaining in his hands, and such sale and execution shall be good by force of the writ of *fi. fa.* *Roll. Abr.* 893. *Salk.* 323. *Cro. Jac.* 73. *Mod.* 557.

No remedy against sheriff on his office being determined but

The sheriff sold goods upon a *fi. fa.* and upon a *vend. expon.* he returned, that he could not find buyers, then his office determined, and he still detained

tained the goods in his hands; and it was said, the plaintiff had no other remedy against the old sheriff, but to have issues upon him. *Latch* 117.

If money be paid to the old sheriff, and he is discharged before the return of the writ, the party shall not be compelled to pay it again; and the plaintiff may have his remedy against the antient sheriff, if he will. *Cro. Eliz.* 208, 209. *pl. 4. Sav.* 123. *pl. 192. Ander.* 247. *pl. 260.*

In all cases where the writ commands the sheriff to go in person, there the writ is his commission, from which he cannot deviate; *Dalt.* 34.; but if the sheriff returns that he was there in person, and this return be received and filed, then any information to the contrary comes too late, because by the filing 'tis become a matter of record, against which no averment *in pais* lies, neither can the party have error upon the return. *Cro. Eliz.* 9, 10. *pl. 1.*

Though it be the duty of the sheriff, &c. having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance; yet, it is said, not to be lawful for them to raise a force for the execution of a *civil process*, unless they find a resistance; and it is certain, that they are highly punishable for using any needless outrage or violence therein. *3 Inst.* 161. *2 Inst.* 193. *Hob.* 62. 264.

The ministerial authority, duty or office of the sheriff, consists principally of these things, as laid down by *Dalton*, c. 5. p. 36.

1. Truly to keep the king's rights of his crown, within his county, *sc.* the king's lands, franchises, suits, rents and all other things that belong to the crown.

2. Truly to gather (and bring into the exchequer) the profits and monies due to the king within his county or bailiwick: *sc.* the king's rents, farms, debts, issues, amerciaments, fines and forfeitures.

3. To seize to the king's use the goods of felons attainted and of fugitives, of persons outlawed, treasures

by distresses after a return of, &c.

Where party paid the money to the old sheriff discharged, &c.

If the writ commands the sheriff to go in person, and he return and file it that he has so done good, though he did not attend.

The duty of the sheriff to execute writs, but not to use force or violence, unless they find resistance.

trove,

trove, waived goods, &c. deodands, estrays, wrecks of the sea, whales, escheats, wards, and lands of idiots.

4. Truly to accomplish and put in execution all manner of writs, process, judgments, executions, commandments, and precepts directed to him from any of the king's courts, which are to be executed within his county, duly to return all such writs, &c. to impanel jurors, and to return them.

5. To be attendant upon the judges in their circuits, &c. and to execute all their lawful commandments.

6. To assist the justices of peace in his county, &c.

In some cases } To join with them.
 } To attend them.
 } To execute their precepts.

7. To execute the precepts of commissioners of sewers, and other commissioners.

8. To execute the precepts of escheators and coroners.

9. To assist the ordinary in suppressing heresies.

10. Duly to keep his courts, &c.

His } Tourne, in this the sheriff is a judge of record, and so hath a judicial power.
 } County or shire court, which in some cases also is a court of record.

11. To proclaim certain statutes, &c.

12. To make purveyances for the king in some cases.

And all these the sheriff is to do his best endeavour for the keeping and preserving thereof, so far as belongs to his office. *Stamf.* 74, 5.

To execute these various offices, the sheriff has under him many inferior officers, viz. an under-sheriff, bailiffs, and gaolers; who must neither buy, sell, nor farm their offices, on forfeiture of 500*l.* 3 *Geo.* I. c. 15.

Under-sheriff.

Under-sheriff.

AS it is impossible the high-sheriff can himself personally execute every branch and thing belonging to his office, and as the law from the necessity of the thing, and in furtherance of justice,

tice, allows him to make a deputy; hence it is necessary, that such deputy should in all things, in which the high-sheriff's personal presence is not required, have the same power with the sheriff himself; and as by the nomination, the sheriff implicitly confers on him a power of doing all such offices as he himself could execute, and which may be transferred by the law; it is likewise held, that the deputy's authority is by law so equal with the principal's, that any condition, covenant, or other bargain to restrain it, is void; and therefore it is now universally agreed, that the under-sheriff may make *bills of sale upon executions, assign bail-bonds, make returns to writs, and in general, do every thing that the sheriff himself can do.* He is appointed by deed, which is afterwards filed in the king's remembrancer's office in the exchequer. *Hob. 12, 13. Salk. 95.*

The high sheriff by law is answerable for the conduct of his under-sheriff, yet he is not to be punished criminally for his acts, nor to be imprisoned, nor indicted for his misdemeanors. *Dalt. 3. Latch 187.*

It appears that the sheriff of antient time had his under-sheriff. *Hob. 13. Stat. Westm. 1. 15. 2 Inst. 191.*

In antient time he was called *sub-vice comes*. *13 Ed. 1. c. 39.* And in stat. 11 H. 7. c. 15. he is called the *shire-clerk*, 9 Co. 49, or the clerk of the county. *Dyer 355.* And yet the word *shire-clerk*, is sometimes taken to be the under-sheriff, sometimes for a clerk in the county court deputy to the under-sheriff. *Dalt. 455.*

He may constitute him at his will, and remove him when he pleases. *Hob. 13.* So tho' he make him irrevocable, yet he may remove him at pleasure; for he is only his deputy. *Ibid.* And it is said, that he need not make an under-sheriff, for he may exercise the office himself. *Ibid.* If he makes an under-sheriff, he may take a bond or covenant to indemnify him from escapes. *Ibid. 14.*

But

Hob. 13.

High-sheriff answerable.

Antiently appointed under-sheriff.

Under-sheriff called sub-vice.

May remove him.

Need not make an under-sheriff.

May take bond, &c.

Cannot enable
under-sheriff to
do that which
he is to do in
person.
2 Inst. 390.
4 Co. 65. Dyer
204.

Before the new
sheriff return any
new writ in
chancery, &c.
to appoint de-
puty on record.

King's bench,
order to appoint
deputies.

Exchequer order
to appoint de-
puty.

C. P. same order.

Sheriffs of Wales
and counties pa-
latine, to appoint

But he cannot enable him to do a thing which the sheriff himself ought to do in person. As to execute a writ of waste, *redisseisin*, partition, dower, &c. 6 Co. 12. *Hob.* 13. *Dalt.* 34. *Jenk.* 181. For in all cases where the writ commands the sheriff to go in person, there the writ is his commission, from which he cannot deviate. *Dalt.* 34.

Before the new sheriff return any writ into the courts of *chancery*, *king's-bench*, *common pleas*, or *exchequer*, he ought to make and have an attorney, or deputy of record, there to receive all manner of writs and warrants to be delivered to them, and if any such sheriff shall do the contrary, he shall forfeit 40*l.* to the king and informer, for every such default, and treble damages to the party grieved. 23 *H.* 6. c. 10.

Every sheriff shall make and cause to be entered on record a sufficient deputy to receive all manner of writs and process under the pains and penalties mentioned in the above statute, and that sheriffs or their deputies shall give their personal attendance in *Westminster-hall* in term time. *E.* 15 *Car.* 2. *K.* *B.* Each deputy yearly before *Hilary* term, have his name and place of his residence in *London* or *Westminster*, set and continued up in tables, in the office of the prothonotary. *R.* *M.* 1654. *C. P.*

By an order in the court of exchequer, all sheriffs shall assign their able attorney and deputy in that court, sitting the court, to attend the court and receive and return all writs, &c. And every sheriff on his giving a recognizance, shall deliver to the clerk in the remembrancer's office the name of the attorney or deputy assigned. *Ord. and Rules in Ex. R.* 45. p. 20.

So by a rule in the *C. B.* *M.* 1654. The sheriff shall have a deputy in court to receive and return writs, whose name and place of abode in *London* or *Westminster*, shall yearly before *Hilary* term be set up in the clerk of the warrants office.

Also every sheriff of every of the *twelve counties of Wales* and of the *counties palatine of Lancaster, Chester*

Chester and city of Chester, shall have in every of the courts of *king's bench*, and *common pleas*, one sufficient deputy at the least, to receive all writs directed to such sheriff, for whom the same deputy or deputies shall be appointed, in like manner and form, and upon like pains, as by the laws and statutes of this realm, other sheriffs of other shires within this realm of *England* be bound to have, in either of the same courts. 23 *H. 6. c. 9.* 1 *Ed. 6. c. 10.* 5 *Ed. 6. c. 26.*

The *Bishop of Durham*, and during the vacation of the said bishoprick, the chancellor of the said county palatine for the time being, shall have one sufficient deputy at least, in the said courts of the *king's-bench*, and *common-pleas*, to receive all writs of proclamation, directed to such *bishop* or *chancellor*. 31 *El. c. 9.* under penalty of 40*l.*

It has been already said, that the under-sheriff usually performs all the duties of the office; a very few only excepted, where the personal presence of the high-sheriff is necessary. But no under-sheriff, nor sheriff's clerk, shall abide in his office above *one year*, 42 *Ed. 3. c. 9.* and if he does, by stat. 23 *H. 6. c. 8.* he forfeits 200*l.*, a very large penalty in those early days, (except the under-sheriff and officers within *London* and such as are heritable). And no under-sheriff or sheriff's officer shall practice as an attorney, during the time he continues in such office. 1 *H. 5. c. 4.* and by rule *Mic. 1654. s. 1. K. B.* if he does, he is to be expelled from the employment of an attorney, and not to be re-admitted, for this would be a great inlet to partiality and oppression. But these salutary regulations are shamefully evaded, by practising in the names of other attorneys, and putting in sham deputies by way of nominal under-sheriffs: by reason of which, says *Dalton*, c. 115. p. 454. the under-sheriffs, sheriffs' clerks, and bailiffs, grow so cunning in their several places, that they are able to deceive, and it may

well be feared, that many of them do deceive, both the king, the high-sheriff, and the county.

By stat. 3 Geo. 1. c. 15. the following oath shall be taken by all under-sheriffs of any county or counties in *South Britain*, (except the counties of *Wales*, and county palatine of *Chester*,) before they enter upon the execution of their offices respectively, *videlicet*.

Oath of the under-sheriff.

" I A. B. do swear, that I will well and truly
 " serve the king's majesty in the office of under sheriff
 " of the county of _____, and promote his
 " majesty's profit in all things that belong to the crown;
 " I will not assent to decrease, lessen, or conceal the
 " king's rights, or the rights of his franchises; and
 " whensoever I shall have knowledge that the rights of
 " the crown are concealed or withdrawn, be it in lands,
 " rents, franchises, suits, or services, or in any other
 " matter or thing, I will do my utmost to make them
 " be restored to the crown again; and if I may not do
 " it of myself, I will certify and inform some of his
 " majesty's judges thereof; I will not respite or delay
 " to levy the king's debts for any gift, promise, reward
 " or favour, when I may raise the same without great
 " grievance to the debtors; I will do right as well to
 " poor as to rich, in all things belonging to my office; I
 " will do no wrong to any man for any gift, reward or
 " promise, nor for favor or hatred; I will disturb no
 " man's right, and will truly and faithfully acquit at
 " the exchequer all those of whom I shall receive any
 " debt, duties, or sums of money belonging to the
 " crown: I will take nothing whereby the king may
 " lose, or whereby his right may be disturbed, injured,
 " or delayed; I will truly return and truly serve all
 " the king's writs to the best of my skill and
 " knowledge; I will truly set and return reasonable
 " and due issues of them that be within my bailiwick,
 " according to their estates and circumstances; and
 " make due panels of persons able and sufficient, and
 " not suspected, or procured, as is appointed by the
 " statutes of this realm; I have not bought, pur-
 " chased,

“ chased, or taken to farm, or contracted for, promised or
 “ given any consideration whatsoever, by myself, or any
 “ other person for me or for my use, directly or indi-
 “ rectly, to any person or persons whatsoever, for the
 “ office of under-sheriff of the county of
 “ which I am now to enter upon and enjoy, nor for
 “ the profits of the same, nor for any bailiwick there-
 “ of, or any other place or office belonging thereunto;
 “ I have not sold or contracted for, or let to farm, nor
 “ have I granted or promised, for reward or benefit,
 “ by myself or any other person for me, or for my
 “ use, directly or indirectly, any bailiwick thereof, or
 “ any other place or office belonging thereunto; I will
 “ truly and diligently execute the good laws and statutes
 “ of this realm; and in all things well and truly be-
 “ have myself in my said office for his majesty’s advan-
 “ tage, and for the good of his subjects, and discharge
 “ my whole duty according to the best of my skill and
 “ power. So help me God.”

“ Which said oath is ordered and enacted to be
 “ administered and given by such commissioners
 “ as shall be named and authorised to administer
 “ the foregoing oath to the high sheriff in the
 “ country, when and so often as a commission or de-
 “ dimus shall be sued forth of the proper court
 “ for that purpose, or by the barons of the said
 “ court, or one of them, when the said sheriffs
 “ desire to be sworn in town.” *f. 11.*

How, and by
 whom to be ad-
 ministered.

He must also take the oaths of *allegiance, supre-*
macy and abjuration, receive the *sacrament*, and sub-
 scribe the *declaration against transubstantiation*, in
 the same manner as the high sheriff, and within the
 same time. And no under-sheriff shall intermed-
 dle with his office before he hath taken the said
 oath as aforesaid. *stat. 27 El. c. 12.* on pain to
 forfeit 40 *l.* one half to the queen and the other to
 the informer; to be sued for by bill, plaint, or
 information in any of the queen’s courts.

Must take the
 oaths of allegi-
 ance.

The oath previous to this, is mentioned in the
 27 of *Eliz. c. 12.* Before this statute the under-
 sheriff was never sworn. *1 Roll. Rep. 274.*

To have no estate or interest in the office.

The under-sheriff hath not, nor ought to have, any estate or interest in the office itself; neither may he do any thing in his own name, *Salk.* 96. but only in the name of the high sheriff, who is answerable for him, because the writs are directed to the high sheriff.

Caution to sheriffs to take security.

Dalt. c. 2. p. 20. says, If the high sheriff will sleep quietly, and take his repose in safety, he shall do well and wisely to look for, and to take good security from his under-sheriff, before he do trust him with his office, which security is commonly by bonds and covenants, taken by the high-sheriff, of the under-sheriff and his friends.

Condition of bond.

1. To save the said high sheriff harmless.
2. To make account in the exchequer,

and

Procure the high sheriff's discharge.

3. To return juries with the privacy of the sheriff.
4. To execute no process of weight, without the sheriff's privacy.

Me advise de ceste covenant.

5. To accompt to the sheriff and attend him.
6. To be ready to attend the sheriff.
7. For his good behaviour in his office.
8. To take or use no extortion.
9. To give attendance at the king's court.

Secondaries of London are under-sheriffs.

The sheriffs of London have two secondaries, who act as under-sheriffs of London, and each sheriff hath an office wherein the business is transacted, the one called the *Wood-street Compter*, the other the *Poultry Compter*.

They are the principal officers, and next to the sheriffs; and the business transacted by them is, the granting of warrants on all writs issued from the courts above, impannelling juries to appear in those courts, and in the court of session, and attending the sheriffs when required.

The secondaries have purchased their places of the city of London time immemorial.

No sheriff of London to take presents of under-sheriffs.

No sheriff of London and Middlesex shall take any sum or present for the execution of the place of under-sheriff, nor oblige him to be at any expence

pence in relation thereto, which has been usually borne by the high-sheriff; except the rewards given by any act for apprehending highwaymen, clippers, coiners, and house-breakers, and the fees for passing the high-sheriff's accounts in the exchequer, and such other disbursements as have been customarily sustained by the under-sheriff. *St. 5 Ann. c. 31.*

Sheriffs and under-sheriffs shall receive all manner of writs in any place, and at all times within their county, when and wheresoever they shall be delivered them, without taking of any thing other than such fees, as the law alloweth, and shall make thereof warrant.

Sheriffs and under-sheriffs to make out warrants.

"If any *high-sheriff, under-sheriff, or his or their deputy or deputies, their clerks, or agents, shall at any time or times after the first of August, 1720, make or cause to be made or delivered out to any person or persons whomsoever, any warrant or warrants, either blank or filled up in part or in all, before they or some of them shall actually have in their custody the respective writs upon which such warrants should and ought to issue, that then the several persons so offending, and every of them, shall forfeit 10l. 6 Geo. 1. c. 21, s. 63.*" That every warrant to be made out or to issue upon any writ or writs, shall have the *same day and year* plainly and distinctly *set down thereon*, as shall be so *set down on the writ itself*, under forfeiture of 10l. to be paid by the person who shall write, fill up, or deliver out, such warrant, *s. 64.*

Sheriffs delivering out warrants before they have the writs in their custody, shall forfeit 10 l.

Every warrant shall have the day and year set down on forfeiture of 10l.

Counties in England and Wales.

In England 40.

*Bedford.
Berks*

*Middlesex
Monmouth*

Bucks

<i>Bucks</i>	<i>Norfolk</i>
<i>Cambridge</i>	<i>Northampton</i>
<i>Chester, C. P.</i>	<i>Northumberland</i>
<i>Cornwall</i>	<i>Nottingham</i>
<i>Cumberland</i>	<i>Oxon</i>
<i>Derby</i>	<i>Rutland</i>
<i>Devon</i>	<i>Salop</i>
<i>Dorset</i>	<i>Somerset</i>
<i>Durham, C. P.</i>	<i>Stafford</i>
<i>Essex</i>	<i>Suffolk</i>
<i>Gloucester</i>	<i>Surrey</i>
<i>Hereford</i>	<i>Sussex</i>
<i>Hertsford</i>	<i>Southampton</i>
<i>Huntingdon</i>	<i>Warwick</i>
<i>Kent</i>	<i>Westmorland</i>
<i>Lancaster, C. P.</i>	<i>Worcester</i>
<i>Leicester</i>	<i>Wilts</i>
<i>Lincoln</i>	<i>York.</i>

In Wales 12.

<i>Anglesey</i>	<i>Flint</i>
<i>Brecon</i>	<i>Glamorgan</i>
<i>Cardigan</i>	<i>Merioneth</i>
<i>Carmarthen</i>	<i>Montgomery</i>
<i>Caernarvon</i>	<i>Pembroke</i>
<i>Denbigh</i>	<i>Radnor,</i>

The Counties Palatine.

Lancaster, Chester, Durham.

The Cinque Ports, 5.

Dover Hastings
Sandwich and
Romney Hythe.
 To which *Winchelsea* and *Rye* are added.

In the time of *Edward the Confessor*, there were but 3 ports, *Dover*, *Sandwich* and *Romney*, but in the time of *William the Conqueror*, *Hastings* and *Hythe* were added, 4 *Inst.* 222. 2 *Inst.* 556, and 1. *John. Winchelsea* and *Rye*.

The warden of the *Cinque Ports* is an officer, who has been appointed time out of mind, &c. for the custody of the ports. 4 *Inst.* 223. And he is constable of the castle of *Dover*. *ibid.*

The constable of the castle of *Dover*, executes all writs in the *Cinque Ports*.

There are also *counties corporate* which are certain cities and towns, some with more, some with less territory annexed to them; to which out of special grace and favour the kings of *England* have granted to be counties of themselves, and not to be comprized in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. Such are the

Counties corporate.

Cities of

<i>Bristol</i>	<i>Canterbury</i>	} One sheriff.
<i>Coventry</i>	<i>Exeter</i>	
<i>Chester</i>	<i>Litchfield and</i>	
<i>York</i>	<i>Worcester</i>	
<i>Gloucester</i>	Towns of	} One sheriff.
<i>Lincoln</i>	<i>Kingston upon Hull</i>	
<i>London and</i>	<i>Southampton</i>	
<i>Norwich</i>	<i>Nottingham</i>	
	<i>Poole and</i>	
	<i>Newcastle up. Tyne</i>	

If an action is brought for a breach of duty in the office of sheriff, the action must be brought against the high-sheriff, as for an act done by him, and not against the under-sheriff; and if it proceeds from a fault of the under-sheriff, or bailiff, that is a matter to be settled between them and the high-sheriff. *Cameron & al. v. Reynolds. Cow. Rep. 403.*

All actions for breach of duty of the office of sheriff, must be brought against the high-sheriff and by default of the under-sheriff.

Writs delivered now to the under sheriff, who makes out warrants.

All writs and process directed to the sheriff, are usually delivered to the under-sheriff, to make out warrants thereon to the bailiff, in the high-sheriff's name; or he may make out such warrant to any stranger. If the sheriff make an under-sheriff, of necessary consequence he gives him power to make bailiffs and precepts, without acquainting him therewith, and this he can do by virtue of his deputation; 12 *Mod.* 468.; for he cannot abridge him of his power, no more than the king can the sheriff himself. 2 *Brownl.* 281. *Hob.* 13. *Cro. Eliz.* 440.

Not to grant an extract of writ till bailed.

If a writ be subtracted by a sheriff's deputy, it is said the deputy himself may be punished. *Leon.* 146. *pl.* 203. *Cro. Eliz.* 175. *pl.* 1. unless bailed; then he may give an extract for the purpose of putting in bail.

High sheriff may appoint bailiffs to execute warrants.

It is impossible for the high-sheriff, and under-sheriff, to execute all writs and process directed to them; therefore the high-sheriff may, for that purpose, empower a bailiff in each hundred, to execute such writs, and if he pleases may appoint a special bailiff on any certain occasion; *Dalt.* 103. *Kielway*, 86. and he may take security from them, as he is answerable for their acts. *Stil.* 18. But he cannot abridge them of their power. 2 *Brownl.* 283.

Bailiffs.

THE officers of the sheriffs are of three kinds; first, *bailiffs in fee*, or *perpetual bailiffs*, who have, by charter or prescription, the execution of writs within the guildable; secondly, *common bailiffs*, who are usually bound with sureties to the sheriff in an obligation for the due execution of their office, and thence are called *bound bailiffs*; thirdly, *special bailiffs*, nominated by the plaintiff or his attorney, and appointed by the sheriff, *pro hac vice*. *Tidd.* 93. *Dalt.* 185. 187.

2 *Black. Rep.* 952. 4 *T. R.* 19.
Bailiffs.

Mr. Justice Blackstone says, *bailiffs* or *sheriff's officers*, are either *bailiffs of hundreds*, or *special bailiffs*.

bailiffs. *Bailiffs of hundreds* are officers appointed over those respective districts by the sheriffs, to collect fines, to summon juries, to attend the judges and justices at the assizes and quarter sessions, and also to execute writs and process in the several hundreds. But as these are generally plain men, and not thoroughly skilful in this latter part of their office, that of serving writs and making arrests and executions, it is now usual to join *special bailiffs* with them. 1. V. 345. The sheriff being answerable for the misdemeanors of these bailiffs, they are therefore usually bound in an obligation for the due execution of their office, and thence are called bound bailiffs. It has been repeatedly held, that if a special bailiff be appointed on the nomination of the plaintiff, the plaintiff must take the consequence of the acts of his bailiff. For the court has considered them as the acts of the plaintiff himself, and has refused to call on the sheriff to return the writ in such cases. *De Moranda v. Dunkin*, 4 Term. Rep. 120. *Buller J. S. P. in C. P. Hamilton v. Daziel*, Hil. 1774.

There are 36 serjeants at mace in London, who may be termed bailiffs; for they execute all warrants granted by the sheriffs on mesne process and executions in London, and perform the same business as bailiffs. These serjeants at mace have each a yeoman, to attend them on the execution of process, &c. and each serjeant gives 800*l.* security to the sheriffs for the faithful discharge of his office.

But for that sheriffs may not let their bailiwicks to farm, therefore when they put in bailiffs, they be but as under-bailiffs to the king, and the sheriff is the high-bailiff, and the other the sheriff's servants, and therefore he shall answer for them if they offend in their office. *Dr. & St.* 136. By Stat. 14 Ed. 3. c. 9. Sheriffs shall appoint such bailiffs for whom they will answer. No sheriff's bailiff shall be attorney in the king's courts during the time he is in office. 1 H. 5. c. 4. R. M. 1654. K. B.

Serjeant at mace
for London to
execute process.

Sheriff answer-
able.

The

Bailiffs to take
oaths, &c.

The sheriff's bailiffs are to take the oaths appointed by stat. 27 *Eliz. c. 12.* they are to be sworn to the supremacy, and for the exercise of their office under the penalty of 40*l.*, and if they commit any act contrary to their oath, they shall lose treble damages.

Not to be bail
in any action.

No sheriff's officer, bailiff, or other person concerned in the execution of process, be permitted to be bail in any action. *R. M. 14 Geo. 2. 2 Str. 890. 2 Black. Rep. 799. Lofft. 153.* It applies to the keeper of the poultry and marshalsea court officers. Nor shall they exact from any person in their custody by arrest, any warrant of attorney to acknowledge a judgment but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereunto, upon pain of being severely punished. *R. E. 15 Car. 2. 1 Lill. Abr. 114.*

Nor take any
warrant of at-
torney.

The Bailiff's Duty.

Bailiff's duty.

THE sheriff or other officer to whom any writ or warrant shall be directed and delivered, ought with all speed and secrecy, to execute his said writ or warrant, according as the same commands him: Besides, he is bound to pursue the effect of his warrant, in every behalf, otherwise his warrant will not excuse him.

A sworn and
known officer
need not shew his
warrant.

A sworn and known officer, (be he sheriff, under-sheriff, bailiff or serjeant,) need not shew his warrant or writ, when he comes to serve it upon any man's person or goods, although the party demands it: But a special bailiff, or other person, who is no sworn and known officer, must shew their warrant to the party, if he demands it, or otherwise the party may make resistance, and need not to obey it, 9 *Co. 69. 21 H. 7. 23. and 37. 8 E. 4. 14. 14 H. 7. 9.* And it behoves every bailiff to keep his warrant, so that he may justify the imprisonment, 10 *Co. 92.*

Although

Although a sworn and known officer need not shew his warrant, yet upon the arrest, he ought to declare the contents thereof, (*viz. at whose suit, for what cause, out of what court, and when returnable,*) to the end, that if it be upon an execution, the party may pay the money, and so free his body from imprisonment; and, if it be upon mesne process, that the party may agree with the other, or else, that he may put in sureties and bail for his appearance, according to law, and know the day of his appearance, 9 Co. 68, 69. & 6 Co. 54.

Where our law-books or statutes do speak of a known bailiff or officer, they are not to be understood (neither is it needful) that such bailiff or officer be known to the party, who is to be arrested; but if he be so commonly known, it is sufficient, 9 Co. 69. (b.)

And an officer gives notice what he is, when he says to the party, "*I arrest you in the king's name;*" and in such case, the party at his peril ought to obey him, though he knows him not to be an officer: if he have no lawful warrant, the party may have his action, 9 Co. 69.

If the sheriff or officer comes to arrest a man, and he flies, the officer may pursue him, and take him again, though in another county, but may not beat, strike, or assault him, for that he was not arrested; but if arrested, and then flies, and draws any weapon, the officer may justify the assault, and taking him again, 2 E. 4. 7.

If any officer arrests a man before he hath a warrant, and afterwards procures one (or a warrant comes after him) to arrest the party for the same cause, yet the first arrest was wrongful, and the party may have his action, *Brown*, 8.

A bailiff of a hundred may execute a writ out of the hundred where he is bailiff, for he is bailiff all the county over, *Lil. Abr.* 266.

An arrest may be by authority of the bailiff, but he need not be the hand that arrests, nor in sight, nor within any precise distance of the defendant; it

He ought to declare the contents.

Who is a known bailiff.

Officer gives notice what he is, when he says, "*I arrest you,*"

If arrest made, and party flies, may pursue.

If he arrests without warrant.

Bailiff of a hundred, bailiff all the county over.

Arrest may be by authority.

is sufficient that he be near, and acting in the arrest. *Black v. Archer, Cowp. Rep. 65.*

When may
break open the
door of a lodger.

A bailiff in execution of mefine process may break open the door of a lodger, having first gained peaceable entrance at the outer door of the house. *Lee v. Gansell. Cowp. Rep. 1.*

Must, as soon as
he executes his
warrant, give an
answer.

The bailiff as soon as he has executed the warrant, must give the sheriff an answer to the same, so that he may be ready to certify to the court, how, and in what manner the same hath been executed, if called on, that is he should forthwith return his warrant into the office of the sheriff.

Agreement to
put in good bail
to the bailiff
bad.

An agreement in writing to put in good bail for a person arrested on mefine process at the return of the writ, or surrender the body, or pay debt and costs, made by a third person with the bailiff of the sheriff, in consideration of his discharging the party arrested, is void by stat. 23 H. 6. c. 10. *Rogers v. Reeves, 1 Term. Rep. 418.* The security must be in the particular form marked out by the statute, *ibid.*

Not to enter a
liberty, without
a non omittas.

A bailiff of a hundred is not to enter a liberty without a warrant on a *non omittas propter aliquam libertatem*, for the lord may have his action on the case against him. *Fitz. 95. 6 Dalt. 187.* he may enter on a *quo minus* out of the exchequer, or wheresoever the king is a party, 5 *Rep. 92.* For where the king is a party, no franchise shall be allowed. *Dalt. 463.* Every writ for the king is a *non omittas* in law of itself, 41 *Aff. 17.*

Caution to
bailiffs how they
execute writs,
&c.

As bailiffs are officers who are to execute the king's writs, they must be cautious how they act, because, when they use needless force, violence and terror, in making an arrest, or where they break open doors, where by law they cannot, and have no plausible excuse for so doing; where they treat persons basely and inhumanly, or keep them in custody until they consent to pay money for their deliverance; or take money for taking bail, or for making an arrest without authority, by force of a blank warrant, filled up with the

name

name of a special bailiff, by the party himself, without the privity or subsequent agreement of the sheriff, &c. the court will grant an attachment. *Finch.* 237. *Hob.* 62. 263. 264. *Noy*, 101. *Moor* 770. pl. 1064. 2 *Roll. Abr.* 278. *Barnard*, 259. 296. 2 *Burr.* 926. see stat. 32 *Geo.* 2. c. 28. and more under title *arrest* on this head.

If any judicial writ or process in any court of record be awarded in the time of the precedent king, this by stat. 1 *Ed.* 6. c. 7. may be executed by the sheriff or his officer in the time of the succeeding prince, &c. 7 *Co.* 30. 31. *Dalt.* 109.

If the king dies, yet he may execute his warrant.

Of Liberties and Franchises.

Franchise and *liberty* are used as synonymous terms, and their definition is, a royal privilege or branch of the king's prerogative, subsisting in the hands of a subject. Being therefore derived from the crown, they must arise from the king's grant; or in some cases, may be held by prescription which presupposes a grant.

Franchise derived from the crown.

They may be vested in natural persons, or bodies politic, in one man, or in many; but the same identical franchise that has been granted to one, cannot be bestowed on another, for that would prejudice the former grant. The principal kinds of franchises are the following: to be a county palatine is a franchise vested in a number of persons: It is likewise a franchise in a number of persons to be incorporated, and subsist as a body politic, with a power to maintain a perpetual succession, and do other corporate acts; and each individual member of such corporation is also said to have a franchise or freedom. Other franchises are to hold a court-leet to have a manor or lordship, &c. to have a court of one's own; to have the cognizance of pleas; to have a bailiwick or liberty exempt from the sheriff of the county, wherein the grantee only and his officers are to execute all process.

Who they may be vested in.

A bailiff

Bailiff of a
liberty.

A *bailiff* of a *liberty* is one who hath the same jurisdiction with the sheriff's bailiff granted to him by the lord of a liberty or franchise.

The sheriff to
execute process
although within
a liberty or
franchise, but he
must write or
send his precept
to the bailiff;

The sheriff being the immediate officer of the king and his court, to execute all writs and process, so to him all writs are directed; although it be of a matter or thing done *within a liberty or franchise*, in which case the sheriff must write or send his precept to the *bailiff of the liberty*, who must serve and execute the same, (as servant to the sheriff,) and make answer or return thereof *to the sheriff*; but the sheriff himself makes the return of the writ into court. *Finch. 52 Dalt. 186. 459.*

If the bailiff give
no answer, then
a *non omittas*,

The stat. *West. 2. c. 29.* enacts, That if such bailiff gave no answer to the sheriffs the court may grant a special warrant with a *non omittas*, which authorizes the sheriff to enter the franchise; for liberties must not be privileged to hinder or delay the general execution of justice; and if they or their ministers do neglect their duties, the superior courts may intermeddle, notwithstanding their privileges, to put the process in execution, that the law may receive no obstruction by them, which is done by issuing a writ with the clause of *non omittas propter aliquam libertatem*, which gives the sheriff power to enter not only that liberty, *but all the liberties within the county.*

If bailiff of a
liberty arrest, he
is to take bail
and to have fees.

If the bailiff of a liberty arrest the party and take bail, it is to be *in the name of the sheriff*, by stat. 23. *H. 6. c. 10.* and he is to have the same fees as the sheriff and his officers. *Dalt. 460.*

Bailiff no autho-
rity out of the
franchise.

The bailiff of a franchise hath no authority out of the franchise. *Finch. 54.*

Bailiff to be
amerced for in-
sufficient returns,
and plaintiff
may sue him for
a false return.

By stat. 27 *H. 8. c. 24.* the *amercement for insufficient returns made by bailiffs of franchises, shall be set on the bailiff's head, and not on the sheriff's*; or the plaintiff may have an action, if it be false return, against the bailiff, the sheriff not being liable at common law for the false return of the bailiff.

If the sheriff return that he has made his mandate to the bailiff of the liberty, who has returned that he has taken the defendant, and has him ready, then the plaintiff may have a rule on him, the bailiff, to bring in the body on producing the return. *2 Term. Rep. 5.*

The bailiff of a liberty is to take the usual oaths. *Dalt. 459. 23 H. 6. c. 10.*

All bailiffs and officers of liberties shall attend upon the justices of assize, justices of gaol-delivery, and justices of peace of the same shire wherein such liberties and franchises be. *27 H. 8. c. 24.*

All lords that have franchises or their bailiffs, shall attend upon the justices of assize and gaol-delivery on pain of forfeiture of their franchises. *20 Ed. 4.*

6 Br. Forfeiture, 115.

The sheriff ought not to make any other return, but according to that which the bailiff of the liberty shall certify him, *Keilw. 3 G.*; if he make no return at all, he may certify that his mandate to the bailiff, who has made no answer.

If the sheriff or his officers by his command enter the franchise without a *non omittas* and make execution of the king's writ, it is good; but the lord of the franchise may have his action against the sheriff or officer for the entry. But the party so taken shall have no remedy. *Fitz. 95, 6. Dalt. 464.*

None can claim a prison as a franchise, unless they have also a gaol delivery. *Salk. 343.*

Wheresoever the king is party, the process is always with a *non omittas propter aliquam libertatem*, there the sheriff ought not to write or send his precept to the bailiff of the liberty, but to enter and execute the process; for where the king is a party no franchise shall be allowed. *Fitz. Prerog. 21. Enquest 12.*

If the bailiff of a liberty dies after he has returned *cepi corpus*, a *disfringas* issues against his successor, because he takes it up under the return of his predecessor. *Gilb. C. P. 31.*

On the return made by the sheriff that the bailiff has the body, a rule may then be on the bailiff, to bring the body into court.

To take the usual oaths.

To attend justices of assize, &c.

So lords or their bailiffs of franchises.

Sheriff not to make any other return than the bailiff.

If sheriff enter without a *non omittas* and execute writ, good.

The lord may have action, not the party.

Who is to claim a prison as a franchise.

If the king be party the *non omittas*, &c. is always inserted in the writ, though where he is party no franchise shall be allowed.

If bailiff of a liberty dies.

The bailiff of a liberty who has the return and execution of writs, is liable to an action of debt for an escape if he remove the prisoner taken in execution to the county-gaol situate out of the liberty and there deliver him into the custody of the sheriff.

A ca. sa. was directed to the sheriff of Yorkshire, who made his mandate to the bailiff of the liberty of *Hallamshire* to arrest the defendant who took him and detained him in the goal of him the chief bailiff within the said liberty, and afterwards removed him (being before the return of the writ) to the common gaol of the sheriff of *York*, (the castle,) and the sheriff received him; an action of escape was brought against the bailiff, of the liberty for such removal. The defendant admitted the above, and justified the removal to the custody of the sheriff as by the mandate he was required, to which there was a demurrer; and the defendant contended that it was immaterial to the plaintiff whether the prisoner be in the custody of one person or another, provided he be forthcoming to answer the exigency of the writ, and that the mandate required the defendant to arrest the prisoner, *so that he the sheriff might have his body at the return of the writ.* In answer to which the plaintiff contended, that the execution was complete in the liberty of *Hallamshire*, when the defendant had arrested the prisoner by virtue of the sheriff's mandate, and had lodged him in his own gaol, after which the defendant could not suffer the prisoner to go out of his bailiwick without an *habeas corpus* or other legal authority. That the defendant did not act as a bailiff to the sheriff, but by virtue of his own authority as chief bailiff of *Hallamshire* in a distinct and independent liberty, and his office is in that respect similar to that of a sheriff. And whatever would be deemed an escape in the sheriff, would be equally so in the owner of such a franchise as the present. When the court inquire into the execution of a writ of this sort, they call on the sheriff for a return, who annexes the bailiff's return to him, "*quod cepit corpus prædicti I. S. cujus corpus A. B. (ballivus) coram justiciariis, domini regis ad diem et locum infra contentum paratum habebit. Return. Brev. 168. 9. Off. Brev. 216.*" It is not that the sheriff, but that he the bailiff, has the body ready to

to produce. When the bailiff has made this return, the *rule to bring in the body* must be on the bailiff, not the sheriff. The profits arising from the execution of these writs, belong to the bailiff. And it would be extremely unjust that the bailiff who receives all the advantages from these writs should subject the sheriff to the responsibility by conveying the prisoner to the county gaol. *Vide Bro. Abr. tit. Escape, pl. 44.* where it is said, that if a person be imprisoned in execution in a county, or a liberty, the gaoler cannot carry him out of the county or liberty unless in some special case: if he does, the prisoner may have an action for false imprisonment.

Albhurst J.—It being admitted that this is the first action of the kind, we must have recourse to the books of *entries* and the *returns of writs*, which are the best authorities in the absence of decided cases. Now it appears from the *retorno brevium*, and the *officina brevium*, that when the sheriff returns that he has commanded the bailiff, and returns the bailiff's answer, he is discharged; so that this court must take notice of particular liberties. The sheriff is likewise bound to take notice of *all the liberties within his county*; and if he were to infringe on any of them, he would subject himself to an action by the owner of the franchise. Therefore when a writ is directed to him to be executed within any liberty in his county, all that he can do is, to command the bailiff of that liberty to execute the writ; but he is *not answerable* for the acts of the bailiff. And after the sheriff has returned the bailiff's answer to him, the plaintiff in the original action cannot *rule the sheriff to bring in the body*, but the *bailiff* himself must be ruled. The sheriff has no right to take bail for the appearance of the person arrested within any liberty in his county; so that he has no means of bringing in the body. As far as the old authorities go, it appears that the execution was complete by the defendants arresting the prisoner within his bailiwick; if so, the prisoner could not be removed to the sheriff of

the county without some legal warrant. This is as much an escape in the defendant, as if he had carried the prisoner into any other county. I am of opinion that the action is well brought, that the plea contains no sufficient answer, and that there must be judgment for the plaintiff.

Buller J.—Formerly there was some doubt, whether the bailiff of a liberty or the sheriff should be amerced, if the sheriff returned that he had commanded the bailiff of the liberty, who answered that he had taken the body, and had not the body there. 2 H. 4. 16. *Kitch. Ret. brew.* 568. Then *Kitchen* proceeds to say, (see 11 H. 4. fo. 41.) that the bailiff should be amerced and not the sheriff. He cites also 5 Ed. 4. 6, and in 47 Ed. 3. 25. 14 Ed. 4. 1. and 36 H. 6. 1. a *distingas ballivum* was awarded to bring in the body, so that notwithstanding the doubt in 2 H. 6. 16. yet in the other cases the court agreed that the *distingas* should go against the bailiff, and not against the sheriff. If the *distingas* go against the bailiff to have the body of the defendant at the return of the writ, he ought to have the custody of the body in the mean time; for if he were obliged to suffer the body to go out of his custody in the mean time, it would be absurd to call on him for a return of the writ. If the bailiff make a return to the sheriff which is bad in law, and the sheriff return it, he shall be answerable because he is bound to know what the law is; therefore he should return "*the bailiff made no return.*" *Kitchen*, 56. 8 H. 6. 56. 4 H. 6. 25. cited in *Kitch.* When the bailiff has once arrested a defendant, he, and not the sheriff, is called on "*to bring in the body.*" And it would be monstrous if the law were otherwise; for then the bailiff would have all the *profits* and advantages without bearing the burden, which he would by these means throw on the sheriff. But the *profits* are in respect of the risk he runs; and here the defendant, having arrested the prisoner, must be answerable.

Grose

27 El. c. 4.
29 El. c. 4.
27 H. 3. c. 7.

Grose J. of the same opinion, and cited *Boyten's case*, 3 Co. 43. to shew that as the bailiffs of a peculiar jurisdiction had arrested the prisoner, they (not the sheriff) were called on to return the writ. Judgment for the plaintiff. *Boothman v. the Earl of Surry*. 2 Term Rep. 5.

Bailiffs of franchises having authority of keeping gaols in their liberty, shall certify the names of the prisoners in their keeping at the next general gaol-delivery in that county or franchise. 3 H. 7. c. 3. *Dalt.* 465.

To certify names of prisoners at assizes, &c.

Gaolers.

Gaolers are also the servants of the sheriff, and he must be responsible for their conduct. Their business is to keep safely all persons as are committed to them by lawful warrant; and if they suffer any such to escape, the sheriff shall answer it to the king, if it be a criminal matter; or in a civil case, to the party injured. 4 Rep. 34. 2 Inst. 592.

By statute 14 E. 3. c. 10. "The gaols shall be rejoined to the sheriffs, and the sheriffs shall have the custody of the same as before; and they shall put in keepers for whom they shall answer." 13 R. 2. c. 15.

Sheriffs to have the custody of gaols.

By 19 H. 7. c. 10. "Every sheriff shall have the custody of the king's common gaols in the county where he is sheriff, except gaols whereof any persons, or body corporate, have the keeping of estate of inheritance. Provided, that no sheriff have the custody of the king's bench and marshalsea."

To have custody of gaols in the county, except, &c.

Every county hath two sorts of gaols, one for prisoners by the sheriff taken for debt, and this the sheriff may appoint in any house, or where he pleases; the other is for breach of the peace and matter of the crown, which is the county goal. *Litch*, 16. 1 And. 345.

Every county two gaols.

Prisoners for debt
and felons, not
to be together.

By the 22 & 23 *Car. 2. c. 20. f. 13.* "It shall
"not be lawful for any sheriff or gaoler to lodge
"prisoners for debt and felons together in one
"room, but they shall be kept apart, upon pain
"that they that offend against this act, shall for-
"feit their office, and treble damages to the
"party grieved."

Escape prisoners.

By the 1 *Ann. c. 6.* those taken on an escape
warrant, are to be sent to the county goal.

Sheriffs must
keep their pri-
soners in the
gaols.

Though the sheriff may remove his gaol from
one place to another within his bailiwick, yet he
must keep it and his prisoners within it, and not
suffer them to go at large out of the prison, though
he himself attends them. *Hob. 202. Latch, 16.*
1 Sid. 318.

Power given to
settle table of
fees for gaolers.

By stat. 32 *Geo. 2. c. 28. f. 5.* power is given
to the lord chief justices of the king's bench, com-
mon pleas, and the lord chief baron of the exche-
quer, or any two of them, with the mayor and
two aldermen, or with three aldermen of *London*
without the mayor, for the prisons within the said
city; and the said lord chief justices and chief
baron, or any two of them, with three justices of
peace of the counties of *Middlesex* and *Surry*, re-
spectively, for the prisons in the said counties
respectively, to settle a table of fees to be taken
by any gaoler in *London*, or in *Middlesex* and *Surry*,
where the same is not established, and where estab-
lished to vary same as requires. And the justices
of peace of every other county and place for the
prisons of each county, are at any general or quar-
ter session of the peace, to settle a table of fees,
and to alter the same; which table of fees shall
be signed by them. And the table of fees for the
prisons (except *London*, *Middlesex*, and *Surry*) shall
be confirmed and moderated by the justices of
assize, and if within *Wales* or *Chester*, by the jus-
tices of great sessions, at the next assizes or great
sessions next after the making or altering such table
of fees.

Gaolers

Gaolers shall forthwith, after the receipt thereof, or rules made for the better government of the prisons in *England*, cause the same to be hung up in some public room or place, and in a conspicuous manner in his prison; and it shall be incumbent on such gaoler, to take care the same be kept up there, so as the prisoners may have free resort thereto, at seasonable times in the day-time, without paying any thing for the same. And also a table of gifts and legacies (when transmitted) shall forthwith be hung up by the gaoler, in a conspicuous manner in some public place in his prison, and where the prisoners may have free resort thereto, without fee, *s. 10.* And no keeper shall take of any prisoner for debt, damages, costs, or contempt, any greater fees, on forfeiture to the party grieved 50*l.* with treble costs by action of debt, &c. in any court of record at *Westminster*, *s. 12.*

Gaolers to cause them to be hung up in public room.

Free resort to in the day-time.

Gaols are for safe custody, and not for punishment, (unless on the criminal side,) therefore prisoners ought to be used with the *utmost humanity*, and not subjected to *other hardships* than such as are *absolutely requisite* for the purpose of confinement only; though, what are so requisite, must too often be left to the discretion of the gaolers; who are frequently a merciless race of men, and, by being conversant in scenes of misery, steeled against any tender sensation. And, it appears in 2 *Inst.* 381. 3 *Inst.* 34. that it was formerly held, that the law would not justify gaolers in setting a prisoner, unless when he was unruly, or had attempted an escape: This being the language of our antient law-givers, "*custodes poenam sibi commissorum non augeant, nec eos torquant; sed omni suavitate remota, pietateque adhibita, judicia debite exequantur.*" *Fleta, l. 1. c. 26.*

Gaols for safe custody, and not for punishment of debtors, and prisoners ought to be used with humanity.

Gaolers, merciless men.

No prisoner shall be put in irons, but such as have been apprehended for felony, or trespasses committed, in parks or vivaries, and those who have been found in arrear upon account; nor shall any prisoner be punished or tortured in any other

No prisoner to be put in irons, except, &c.

Liberty intended where the officer hath just reason.

manner, than by law they ought, and that none disseise them whilst they are in prison, of any thing which belongs to them, *Britt. c. 11. f. 5. 2 Inst. 316. 381. 3 Inst. 34. 39.* And therefore, this liberty can be only intended where the officer hath just reason to fear an escape, as where the prisoner is unruly, or makes an attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of *England*, by which gaolers are forbid to put their prisoners to any pain or torment. *H. H. P. C. 601.*

If death be owing to cruelty.

If a prisoner's death be owing to cruel and oppressive usage on the part of the gaoler, or any officer of his, it will be deemed wilful murder in the party guilty; therefore, if a prisoner dies, whether by disease or accident, the coroner is to take inquisition of the death, and the gaoler must give notice to the coroner of such death.

What is deemed murder.

A gaoler knowing that a prisoner infected with the small-pox, lodged in a certain room in the prison, confined another prisoner against his will in the same room. The second prisoner, who had not had the distemper, of which the gaoler had notice, caught the distemper, and died of it; this was held murder in the gaoler, *2 Str. 856.*

Gaoler cannot receive any person on the civil side without warrant.

A gaoler cannot receive any person on the civil side, without the officer's warrant to detain him; and, if he refused to take him, and the prisoner escape, the gaoler shall not only answer the debt, (in case the sheriff is obliged to pay it,) but be fined for such refusal. *4 E. 3. c. 10.*

If escape, gaoler may retake.

If one in prison for a debt make an escape, the gaoler, &c. may take him again. *3 Co. 44 and 52.*

Gaoler not to take bonds of prisoners.

Gaolers cannot take obligations from their prisoners, to be true, for enlargement, or meat and drink; if they do, such obligations are void, *10 Co. 100. b. Plowd. 68. 9 Co. 87. b.* for the gaoler is in a manner bound to find victuals for his prisoners.

As the gaoler is but the sheriff's servant, therefore he may discharge him at his pleasure; and if he refuses to surrender up or quit possession of the gaol, the sheriff may turn him out by force, as he may any private person; also they are each of them so far under the regulation of the court of king's bench, that they will compel the sheriffs to assign prisoners, &c. and gaolers to surrender up gaols, &c. *Reg. 29.*

Sheriff may discharge gaoler at pleasure.

If the sheriff's gaoler suffers a prisoner to escape, the action must be brought against the sheriff, not against the gaoler; for an escape out of the gaoler's custody is by intendment of law, an escape out of the sheriff's custody. *2 Lev. 159. 2 Jon. 62. 2 Mod. 124. 5 Mod. 414. 416.*

If gaoler suffers escape, action to be brought against the sheriff.

Where actions for escapes are said to lie against gaolers, such *absolute* gaolers are intended as writs are directed to; yet it hath been holden by *Holt J. C.* that an action lies for a voluntary escape against the gaoler, as well as against the sheriff, it being in nature of a rescue. *2 Salt. 441. 3 Salk. 18.*

When actions are said to lie against gaolers, mean gaolers absolute, so whom writs are directed.

The stat. *3 Geo. 1. c. 15. s. 10.* directs how gaolers shall be punished for buying, selling, or farming their offices.

Punishment.

They are not only punishable by attachment, as all other officers are by the courts to which they more immediately belong, for any gross misbehaviour in their offices, or contempts of the rulers of such courts, but they are also punishable by any other courts for disobeying writs of *habeas corpus* awarded by such courts, and not bringing up the prisoner at the day prefixed by such writs. *2 Haw, Pl. Cr. 151. s. 31.*

Liable to be attached for gross misbehaviour, or for not obeying rules of court and writs.

And the stat. *2 Geo. 2. c. 22. s. 16.* inflicts a *viaticum*, penalty of *50l.* on the gaoler for not permitting prisoners to send for victuals from what place they please, or to have such bedding as they think fit.

And by the *8 & 9 W. 3. c. 16. s. 14.* no prisoner shall be compellable to pay rent for any chamber in any prison, for any longer time than

Rent,

he shall be in possession thereof, nor to pay above 2s. 6d. a-week for such chamber, under the penalty of 20l.

Arrest, On Mesne Procefs.

Definition of the word arrest.

ARREST in common law, is the apprehending or restraining of one's person, in execution of the command of some court, or officer of justice.

When said to be arrested.

When a person is legally stopped, apprehended and restrained of his liberty for debt, &c. he is said to be arrested, or put under an arrest; which is the beginning of imprisonment.

None to be arrested for debt but by a precept or warrant.

"None shall be arrested for debt, trespass, &c. or other cause of action, but by virtue of a precept or commandment of some court; but for *treason, felony, or breach of the peace*, a man may arrest without precept or warrant. *Terms de ley*,

The king cannot command any one by word of mouth to be arrested.

"54." The king cannot command any one by word of mouth to be arrested for a debt, but he must do it by writ, or order of his courts, according to law: nor may the king arrest any man, for suspicion of *treason* or *felony*, as his subjects may, because if he doth wrong, the party cannot have an action against him. 2 *Inst.* 186.

How an arrest must be.
6 *Mod.* 105.

An arrest must be, "*by corporal seizing or touching the defendant's body*;" after which the bailiff may justify breaking open the house, in which he is, to take him: otherwise he has no such power, but must watch his opportunity to arrest him. For every man's house is looked upon by the law, to be his *castle of defence*, and *asylum*, wherein he should suffer no violence. 5 *Co.* 91. 3 *Inst.* 162. *Dalt.* 310.

Every man's house is his castle, therefore cannot break open outer door.

When he breaks open the house.

If a bailiff lays hold of one by the hand (whom he hath a warrant to arrest) as he holds it out of the window, this is such a taking of him, that the bailiff may justify the breaking open the house to carry him away. 1 *Vent.* 396.

A sheriff

A sheriff is bound to execute process issuing out of a court of competent jurisdiction; and though there be no cause of action, or the process is erroneous, he is not responsible: the plaintiff himself, in such cases, is liable to an action for maliciously holding to bail. It would be extremely hard, indeed, upon a sheriff or his officers, if they were bound to enquire into the truth of an exemption, and determine upon it at their peril. *Asbburst J Tarlton v. Fisher, Douglas's Rep. 676.*

Sheriff bound to execute process out of a court of competent jurisdiction, if erroneous.

A bailiff may, in execution of mesne process, break open the door of a lodger, having first gained peaceable entrance at the outer door of the house. *Lee v. Gansell, Cow. Rep. 1.* For in the case of *Asl'ey v. Pindar, 1 Geo. 3. 1760*, an inner door has no protection at all; and therefore if the officer lawfully enters the outer door, he may break open the inner door, to execute the duty of his office.

When a bailiff may break open door of a lodger.

Inner door, no protection.

The sheriff cannot break an outer door to arrest the defendant, on mesne process, or execution. *Cro. Eliz. 908.*

Cannot break an outer door.

And upon a *capias*, &c. or other process, at the suit of a common person, the sheriff after request to open the doors, and denial, cannot break the house of the defendant, and that in such case the sheriff would be a trespasser, though the execution would be good. *5 Co. 92. b. Cro. Eliz. 909. Moor, 668. Yelv. 28. March, 4. Cro. Car. 537. 1 Jon. 430. 1 Bulstr. 46.*

On a *capias*, &c. at suit of a common person, cannot break open house of defendant.

And yet, if the door be open, and the sheriff or bailiff come to the house, and shews the king's process, and offers to enter to execute the same, (being at the suit of any subject,) and the owner shuts the door against the sheriff, &c. here the officer, "giving notice of the cause of his coming, and requesting to have the doors open;" may break open the house, if the party refuses to open the door. *5 Co. 92, 93. Dalt. 351.*

If door be open, and bailiff comes and shews process, and offers to enter, and owner shuts door, officer gives notice, &c. may enter. *5 Co. 92.*

The sheriff's officers, on mesne process, came to the house where the defendant lodged, and knocked

Cannot enter with swords drawn, &c.

knocked

knocked at the door, whereupon the house-keeper's wife came to the door and opened it a little to see who was there, and the bailiffs presently with their swords drawn, rushed in by force, and went up to the chamber-door where the defendant lay, broke it open, and hurt divers in the house. Held, that the entry was unlawful, for the opening of the door was occasioned by craft, and their entering in was by violence, for which they were all fined. *Dalt.* 528. See *Hob.* 263, 264. *Waterhouse & Ux. v. Saltmarsh.*

or by craft.

The privilege of a man's house extends to the owner only, and not to a stranger. Therefore, if a stranger fly into the house, the bailiff may enter, &c.

The privilege of a man's house only extends to the owner, and shall not protect any person who flies thither, nor the goods of any person conveyed, to prevent any lawful execution, or to escape the ordinary process of law. And therefore if the sheriff having process against a stranger, do desire to have the door opened, or to have the body of the party flying thither, after such request, if denial or refusal be made, or that it be not done, then the sheriff or his officers may break open the house, and execute the process without any danger of law. 5 Co. 93.

In all cases, where the king is party, he may break open the doors,

But, notwithstanding the general rule, that the sheriff cannot break the outer door to arrest at the suit of the subject; yet, in all cases, it is said, where the king is party, if the door be not open, the sheriff may break the door of the party, either to take him, or to execute the process, if he cannot otherwise enter therein; but, before such entry, he ought "to signify the cause of his coming, and make request, that the doors may be opened. 5 Co. 91. 13 E. 4. 9. *Fitz. Barr.* 110. *Br. Execution*, 10.

but he must first signify the cause.

Capias utlagatum, though on mesne process.

So, upon a *capias utlagatum*, though on mesne process, and at the suit of a subject, the officers may break open any outward doors, after demand and refusal. 2 Show. 87. *The King v. Bird.* 19 Vin. Abr. 433

And in all cases, where the king hath interest, may enter.

And, in all cases where the king hath any interest, the writ is *quod non emittas propter aliquam libertatem*; and therefore, the privilege of any man's

man's house, will not hold against the king.

Dalt. 350.

If the sheriff's bailiffs enter the house, the door being open, and the owner locks them in, the sheriff may justify breaking open the door, for the enlarging and setting at liberty the bailiffs; for, if in this case, he were obliged to stay until he could procure a *hominē replegiandū*, it might be highly inconvenient; also it seems, that in this case, the locking in the bailiffs, is such a disturbance to the execution, that the court will grant an attachment for it. *Cro. Jac.* 555. *1 Roll. Rep.* 132.

Palm. 52. *White v. Whitshire.*

So, if one be arrested, and after escapes into his house, the sheriff may break the doors to take him, as where one opened his casement, and the sheriff took him by the hand. *1 Roll. Rep.* 138.

Palm. 54. *6 Mod.* 173.

A bailiff cannot break in to arrest at the window of a house, for windows and outer doors are intended for security of the house against persons from without endeavouring to break in. *Foster's Cr. L. c.* 8. *f.* 20.

In an action for an escape against the sheriff of *A.* the fact was, that an arrest was made by young *Fenton*, and not the father who was the officer. The father was at 200 yards distance, and not in sight of the defendant, but young *Fenton* said, at the time of the arrest, "that he had authority in his pocket, and that it was at the suit of *Blatch*." It was tried before *Mr. Justice Willes*, and he left it to the jury, whether old *Fenton* the officer was not *quodam modo* present at the time of the arrest; and they found for the plaintiff. Upon motion for a new trial, *Lord Mansfield* said, it was properly left to the jury, for it was their province to judge whether the officer was on that business; and if he was immediately following the son, it was sufficient. *Mr. Justice Aston* said, It is not necessary, that the bailiff should be actually in sight, but he must be so near, as to be near at hand, and acting in the arrest; the jury

If he enters, and owner locks him in, sheriff may enter to release.

Locking in bailiffs, court will grant an attachment.

If one escapes after arrest, may break open.

Cannot break in at windows.

Arrest made by a bailiff's son, the father 200 yards distant, held good, tho' he was not in sight.

jury have found he was. *Mr. Justice Ashburst* concurred. *Cow. Rep.* 65.

If resisted, and the party making resistance is killed, justifiable in the officer.

Murder to kill the officer.

Founded in reason.

If defendant flies, and is pursued, and in the pursuit, officer kills him, murder.

If officer in the heat of the pursuit, and merely to overtake defendant, and should trip up his heels, &c. and death should ensue, manslaughter.

And why.

But, if he had made use of a deadly weapon, murder.

Ministers of justice are under the protection of the law, and why.

Where persons having authority to arrest or imprison, using the proper means for that purpose, are resisted in so doing, and the party making resistance is killed in the struggle, this homicide is justifiable. And, on the other hand, if the party having authority to arrest or imprison, using the proper means, happen to be killed, it will be murder in all who take a part in such resistance. For, it is homicide, committed in despite of the justice of the kingdom. This is founded in reason, and public utility. For, few men would quietly submit to an arrest, if in every case of resistance, the party empowered to arrest, was obliged to desist, and leave the business undone.

A defendant, in a civil suit, being apprehensive of an arrest, fleeth, the officer pursueth, and in the pursuit, killeth him. This, saith *Lord Hale*, will be murder. *Ha. Hif. Pl. Cr.* 481.

If the officer in the heat of the pursuit, and merely in order to overtake the defendant, should trip up his heels, or give him a stroke with an ordinary cudgel, or other weapon *not likely to kill*, and death should unhappily ensue, he cannot think that this will amount to more than manslaughter; if, in some cases, even to that offence. The blood was heated in the pursuit, his prey, *a lawful prey*, just within his reach, and no signal mischief was intended. But, had he made use of a deadly weapon, it would have amounted to murder. The mischievous vindictive spirit, the *malitia*, which always must be collected from circumstances, determines the nature of the offence. *Fost. Cr. L.* 270, 271.

Ministers of justice, while in the execution of their offices, are under the peculiar protection of the law. This special protection is founded in great wisdom and equity, and in every principle of political justice. For, without it, the public tranquillity cannot possibly be maintained, or private

vate property be secured, nor in the ordinary course of things, will offenders of any kind be amenable to justice. And for these reasons, the killing of officers so employed, hath been deemed murder of malice premeditated, as being an outrage wilfully committed, in defiance of the justice of the kingdom. This rule is not confined to the instant the officer is on the spot, and at the scene of action, engaged in the business which brought him thither; for he is under the same protection of the law, *cundo, morando, & redeundo*. And therefore, if he cometh to do his office, and meeting with great opposition, retireth, and in the retreat, he is killed: this will amount to murder. *Foss.* 308, 309.

The ministers of justice in civil suits, under proper limitations, are entitled to the same protection for themselves and followers, and upon the same principles of political justice. *Ib.* 310.

And, in the case of arrests upon process, whether by writ or warrant, if the officer named in the process give notice of his authority, and resistance is made, and the officer killed, it will be murder; if, in fact, such notification was true, and the process legal. *Ibid.* 311. "Provided the process, be it by writ or warrant, be not defective in the frame of it, and issues in the ordinary course of justice, from a court or magistrate having jurisdiction." *Ibid.*

An arrest in the night, as well as in the day, is lawful, and as well at the suit of a subject, as at the king's; for the officer or minister of justice ought to arrest him when he can find him, for otherwise, perhaps, he will never arrest him; because, says Lord Coke, *he who has done amiss, hates the light*. 8 Co. 37. b. Salk. 322. pl. 8. 6 Mod. 130.

After an arrest on *mesne process*, the bailiff may suffer the prisoner to go at large, provided he has him at the return of the writ. *Asbhurst J.*—But if it is otherwise, on an *execution*, if he voluntarily permits him to go, though only for a minute, he cannot

Rule not confined to the instant the officer is on the spot. And if he comes to do his office, and meets with opposition, retires, and in the retreat killed, murder. Ministers in civil suits entitled to protection.

On arrests on process if officer gives notice of his authority and officer killed, murder.

Process must be legal.

Arrest in the night, as well as day, lawful.

After an arrest on mesne process, bailiff may let prisoner go, provided he has him at the return of writ.

cannot afterwards retake him. 2 *Term Rep.* 176, 76
Atkinson v. Mottison & al.

False imprisonment will not lie for such a recaption. *Ibid.* 1 *Salk.* 408. *Noy*, 72.

Cannot arrest
after return of
writ.

He cannot arrest *after* the return day, either by *original or bill.* *Cro. Eliz.* 760. *pl.* 33. *Moore*, 701. *pl.* 993.

Of the Warrant on the Writ.

Sheriff never executes himself, but grants warrants.

Although all writs and proceſſes are directed to the ſheriffs of the different counties; yet, he never executes the ſame himſelf, but his under-ſheriff uſually makes his warrant to his *bailiffs or officers*, for the execution of ſuch writs.

Warrants muſt be according to the writs, and made in name of high-ſheriff.

And theſe warrants muſt be made according to the nature of the writ, and contain the *ſubſtance* thereof, and be made out in the high-ſheriff's name, and *under the ſeal of office.*

No warrant to be made out without the writ.

By ſtat. 6 *Geo.* 1. c. 25. ſ. 53. no high-ſheriff, under-ſheriff, their deputies or agents, ſhall make out any warrant, before they have in their cuſtody the writs upon which ſuch warrants ought to iſſue, on forfeiture of 10*l.* And every warrant to be made out upon any writ out of the king's bench, common pleas, or exchequer, *before judgment*, to arreſt any perſon, ſhall have the ſame day and year ſet down thereon, as ſhall be ſet down on the writ itſelf, under forfeiture of 10*l.* to be paid by the perſon who ſhall fill up, or deliver out ſuch warrant. ſ. 54.

And all warrants to have day and year ſet down.

Every warrant ſhall have name of attorney ſubſcribed.

By ſtat. 2 *Geo.* 2. c. 23. ſ. 22. every warrant that ſhall be made out on any writ, proceſſes, or execution, ſhall, before the ſervice or execution thereof, be *ſubſcribed or indorſed with the name* of the attorney, clerk in court, or ſolicitor, by whom ſuch proceſſes, &c. ſhall be ſued forth. But the not ſubſcribing, or indorſing the name, or any warrant made on any writ, &c. ſhall not vitiate the ſame, but ſuch writ ſhall be valid and effectual, provided the writ whereon ſuch warrant

But the not doing of it, not to vitiate ſame.

If writ be ſubſcribed.

is made out, be regularly subscribed or indorsed; and every sheriff or other officer, who shall make out any warrant upon any writ, process, or execution, and shall not subscribe or indorse the name of the attorney, clerk in court, or solicitor, who sued out the same, shall forfeit 5*l.* to be assessed as a fine by the court, out of which such writ, &c. shall issue; one moiety to his majesty, and the other to the person aggrieved. See 12 *Geo.* 2. c. 12. s. 4.

Foskins gl.

The warrant must be had *before the arrest*; or the arrest will be illegal, and the party grieved may have his action for false imprisonment.

Warrant before arrest.

4 *Bacon's Abr.* 452.

If the writ be sued out of the court of king's bench, then the warrant must be, "*So that I may have his body before the lord the king, &c.*"

Warrant in K. B.

If out of the common pleas, then it must be, "*So that I may have his body before the justices of the lord the king, &c.*"

Warrant in C.P.

If out of the exchequer, then, "*So that I may have his body before the king's barons of his exchequer, &c.*"

Exchequer.

If out of chancery, "*So that I may have his body before the king in his court of chancery, on, &c.*"

Chancery.

These warrants need not be shewn, unless demanded, nor before the defendant peaceably submits to the arrest. *Cro. Jac.* 485, 486. provided the bailiff is a known bailiff; but a special bailiff must shew his warrant.

Need not be shewn unless demanded.

It is very important that, in all cases where an arrest is made by virtue of a warrant, the warrant (if demanded at least) should be produced. *Lord Kenyon. Hall v. Roche, 8 Term Rep.* 188.

Warrant if demanded should be produced.

And if a name is inserted afterwards by the bailiff in the warrant, such warrant is illegal, and the arrest void. *Housin v. Barrow, 6 Term Rep.* 122.

If warrant is altered.

If the demand is made, he must then shew his authority, because the party may free himself by payment of the debt, or agree with the plaintiff,

If demand is made, he must shew.

or

or put in bail for his appearance. *Cro. Jac.* 485, 486. *Countess of Rutland's case.*

If directed to two, one may execute.

If to 4, or 3.

If a warrant be directed to two men jointly, to arrest another; yet, either of them alone may do it. If directed to four or three jointly or severally, yet two may arrest him, because it is for the execution of justice. *Co. L.* 181. *2 Rol. Rep.* 137.

Sunday.

Process or warrant not to be served on Sunday.

By stat. 29 *Car.* 2. c. 7. s. 6. it is enacted, "that no person upon the *Lord's day*, shall "serve or execute any writ, process, warrant, "order, judgment, or decree, (except in cases of "treason, felony, or breach of the peace,) but "that the service of every such writ shall be void; "and the person so serving or executing the same, "shall be as liable to the suit of the party grieved, "and to answer damages to him for doing thereof, "as if he or they had done the same, without any "writ, process, warrant, order, judgment, or "decree."

Taken on a *capias utlagatum* and discharged on motion.

The defendant was taken on a *capias utlagatum* on a *Sunday*, and on motion, was discharged, but attachment refused. *Barnes*, 228.

Arrest on Sunday void, and an action will lie.

An arrest on *Sunday* is void, and the party may have an action of false imprisonment. *Salk.* 78. *pl. 1.*

May take a prisoner on a Sunday, if he escape.

A prisoner escaped, and was retaken on a *Sunday*, by virtue of a judge's warrant, called an escape warrant. The question was, whether this taking was such service of process, as was against the act 29 *Car.* 2. c. 7. ? *Per cur.*—This is a taking in the nature of a *fresh pursuit*, and is no original process; and the gaoler or party might have taken him on a *fresh pursuit*, on a *Sunday* before this statute. 6 *Mod.* 95. 2 *Salk.* 626. *pl. 7.* 2 *Lord Ray.* 1028. he might have been re-taken on a *Sunday*, without a warrant. 6 *Mod.* 95.

On escape warrant, may take on Sunday.

Any person may be taken on the *Lord's day*, by virtue of any warrant granted in pursuance of this act.

act. 1 Ann. stat. 2. c. 6. s. 1. 5 Ann. c. 9. s. 3.
Vide title escape.

If a defendant arrested on a *Saturday* escapes, he may be retaken on the *Sunday*. *Mod. Caf. 231.* for that is not an execution of process, but a continuance of the former imprisonment. 6 *Mod. Caf. 321.*

If arrested on Saturday, and escapes.

It is said that a person may be arrested on a *Sunday*, on lord chancellor's warrant, or an order of commitment for contempt; for he is considered as in custody from the time of making the order, and the warrant is directed to the gaoler, as in the nature of an escape warrant. 1 *Atkins 55. Sed qu.*

May be arrested on a Sunday, on lord chancellor's warrant.

I remember, that a sheriff's officer was indicted for arresting defendant on a *commission of rebellion*, out of the *exchequer of pleas*, on a *Sunday*, and he was found guilty, and fined.

Commission of rebellion.

The defendant cannot be taken on a *Sunday*, for the non-payment of a penalty upon a conviction. 1 *Term Rep. 265.*

For a penalty on conviction.

So on attachment for non-performance of an award, or non-payment of costs. *Rex v. Myers.*

Attachment.

And where *A.* was arrested at the suit of *B.* and discharged, the sheriff not knowing that there was also a detainer in his office at the suit of *C.*, and on the *Sunday* following he was arrested at *C.*'s suit, the court discharged him out of custody; considering the arrest on the *Sunday* as an *original taking*, or as a retaking after a *voluntary escape*. *Atkinson v. Jamison. 5 Term Rep. 25. Vide Barnes, 373.*

Where *A.* was arrested and discharged, the sheriff not knowing of another writ being in the office, held he could not be taken on Sunday, on the detainer.

As to privileged Places.

No arrest ought to be made in the *king's palace* at *Westminster*, where his royal person resides, (except where the process issues out of the palace court, 3 *Term Rep. 735.*) or in the king's presence, nor in any place where the king's justices are actually sitting. 3 *Black. Com. 289. Stat. 28 H. 8. c. 12.* Nor it is said of any of the king's servants in ordinary in any other place, without notice

King's palace.

tice

tice first given to the *lord chamberlain*, that he remove them, or make them pay their debts. *Wood's Inst.* 576. 1 *Lev.* 159. 3 *Inst.* 140, 141.

Privilege by the common law of the palace.

The privileges of the palace are by common law; in respect of the queen's presence, but that privilege does not determine so soon as ever she turns her back, when a house has been declared a palace. *Powell Just.* 3 *Salk.* 284. *Holt. C. J.* held, that where there was a total absence, where the queen was neither present in person nor by her domesticks, or any of her family, the place was not privileged; otherwise where there was only a short and personal absence, *Ibid.* *Elderton's case, same case*, 2 *Lord Ray.* 978. 6 *Mod.* 73.

The defendant arrested in the verge of the court: motion to discharge him on common bail, refused by K. B.

The defendant was arrested in the verge of the court, motion to discharge him on common bail, and the bailiffs to answer the matters of the affidavit. Court said, that if the sheriff enter a franchise, and execute process therein, without a *non omittas*, the execution is good, though the sheriff is liable to an action, according to the rule, *quod fieri non debet, factum valet.* *Fitzpatrick v. Kelly.* *Mich.* 22 *Geo.* 3. *B. R.* and *disch. the Rule.*

Stannaries.

The jurisdiction of the stannaries is only for tin matters, and where the persons who sue or one of them, be a tinner. *Cro. Car.* 333. *pl.* 19. *stat.* 16. *Car. c.* 15. *f.* 4. They have no jurisdiction of any local action arising out of the stannaries. 7 *Mod.* 103.

Privileged places now demolished and to prevent arrests highly penal,

Formerly one of the greatest obstructions to public justice, both of the civil and criminal kind, was the multitude of pretended privileged places, where indigent persons assembled together to shelter themselves from justice (especially in London and Southwark); such as *White-friars*, *Savoy*, *Salisbury-court*, *Ram-alley*, *Mitre-court*, *Fuller's rents*, *Baldwin's-gardens*, *Montague-close*, or the *Minories*, *Mint-Clink*, or *Deadman's place*, within the *Hamlet of Wapping* or *Stepney*, under pretext of their being ancient palaces of the crown, or the like: all of which sanctuaries for

for iniquity are now demolished, and the opposing of any process therein, is made highly penal, by stat. 8 & 9 W. 3. c. 27. s. 15. 9 Geo. 1. c. 28. s. 1. "and 11 Geo. 1. c. 22. s. 1. which enacts, "that persons opposing the execution of any process in such intended privileged places, within the bills of mortality, or abusing any officer in his endeavours to execute his duty therein, so that he receives bodily hurt, shall be guilty of felony, and transported for seven years: and persons in disguise, joining in or abetting any riot or tumult, on such account, or opposing any process, or assaulting or abusing any officer executing, or for having executed the same, shall be felons without benefit of clergy."

Perf. opposing execution of process or abusing the officer, if he receives a hurt, guilty of felony.

Sheriff may arrest within the *liberty of the rolls*, as that has been held no privileged place, unless for witnesses, or parties to the suit, going and returning. *Freem. Rep.* 368. pl. 474.

May arrest within the liberty of the Rolls.

Who are privileged from Arrests.

PRIVILEGE, *privilegium*, formed from the Latin *privata lex*, in the general, any kind of right, or the like, prerogative or advantage, attached to a certain person, condition or employment, exclusive of others.

Privilege personal, is that which is granted to any person, either against or beyond the course of the common law.

Privilege is an exemption from some duty, burthen or attendance, to which certain persons are intitled from a supposition of law, that the stations they fill, or the offices they are engaged in, are such as require all their time and care; and that therefore without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires.

King and Queen.

King and queen.

The person of the king is so sacred, as that no violent hands may in any case be laid upon him; neither may he be impleaded or sued by action, as a common person may; but whosoever the king shall seize any man's land, or take goods, (having no title by order of his laws so to do,) the subject for his remedy in all such cases, is driven to sue unto his sovereign; by way of petition only, for that no action lies against the king. *Stamf. of Prerog.* 42. 72, 73. A queen regnant has the same privileges as a king. A queen consort is free from arrests, and a queen dowager is also intitled thereto. *2 Inst.* 48. *3 Inst.* 30. *pl.* 19.

Peers.

Peers of the realm.

The peers of the realm are by birth hereditary counsellors of the crown, and may be called together by the king to impart their advice in all matters of importance to the realm, either in time of parliament, or, which hath been their principal use, when there is no parliament in being. *Co. Litt.* 110. And in our law books, it is laid down, that peers are created for two reasons. 1. *Ad consulendum.* 2. *Ad defendendum regem:* for which reason, the law gives them certain great and high privileges; such as freedom from arrests, &c. even when no parliament is sitting: because the law intends that they are always assisting the king with their counsel for the common-wealth; or keeping the realm in safety by their prowess and valour. *7 Rep.* 34. *9 Rep.* 49. *12 Rep.* 96.

Bishops.

This privilege extended formerly to abbots, as it now does to bishops. *Moore*, 767. *3 Seld.* 1138.

The law supposes them to have sufficient property to answer in suits and actions brought against them: but for *treason, felony, or breach of the peace*, their persons are not free from arrests. *4 Inst.* 25.

The

The sixteen peers of *Scotland*, also have all the Sixteen peers of Scotland. privilege of parliament, which the peers of *England* now have. Stat. 5 *Ann.* c. 8.

Also all the rest of the peers in *Scotland* have all the privileges of the peerage of *England* (except voting in parliament.) *Str.* 990. *Fortesc.* c. 163. 165. *Peere Wms.* 583. 4 *Bacon Abr.* 229. The rest of the peers of Scotland.

Privilege of arrests extends only to the peers of *Great Britain* and *Scotland*, so that a nobleman of any other country, or a lord of *Ireland* hath not any other privileges in this kingdom than a common person; but it seems that an infant peer is privileged from arrest, his person being held sacred. *Co. Litt.* 150. 2 *Inst.* 48. 3 *Inst.* 30. Extends only to peers of England, and Scotland.

Peers.

A peeress by birth, or marriage, also hath privilege from arrests, but if a peeress by marriage, marries a commoner, she is not intitled to any privilege. 2 *Inst.* 50. *For. Rep.* 162. Peeress.

The widows of peers are to have privilege. 2 *Cha. Caf.* 224. 2 *Sid.* 31.

A peer may be arrested on an attachment of contempt, for neglecting to obey a *ba. corp.* issued out of either of the courts at *Westminster*. 1 *Burr.* 631. *Rex. v. Earl Ferrers.* Peer may be arrested on an attachment of contempt.

The privilege of the lords, commences from the teste of the writ of summons to parliament, and it is said that upon every session and prorogation, their privilege is for twenty days before and twentys days after each session. 2. *Lev.* 72. *Cha. Caf.* 221. *Sid.* 29. pl. 2. *Ord. Dom.* 27 Jan. 1628. But as they are always supposed to be attending on the king, their privilege is for ever sacred and inviolable. When privilege of peers commences.

King's Servants.

The court declared their opinion to be, that none of the king's servants in ordinary, can be arrested without notice first given to the lord chamberlain, who cannot privilege any perpetually, but in convenient time, must either remove such, or make them pay their debts; but if the Court declared, that none of the king's servants in ordinary can be arrested without notice to lord chamberlain.

bailiff *without notice*, do arrest such, the *messengers of the lord chamberlain* cannot rescue the prisoner by letter, (the arrest being lawful,) nor by warrant, but the party is *punishable for his contempt*; for no man can know the king's servant by his face, but he must shew his privilege on the arrest. *Keb. Rep. 84. pl. 137. 2 Keb. 3. pl. 6. Keb. 842. pl. 33. 2 Show. Rep. 84. pl. 72. T. Raym. 152. 34.*

No petition to
protect in the
house of lords.

Warden of
Tower.

King's servants.

No petition is to be received for protecting his majesty's servants. *Ord. Dom. 23 Nov. 1693.*

A warden of the Tower claimed privilege as a king's servant, but denied. *2 Keb. 485.*

T. Raym. 152. says, The chief justice reported, "*That the king's servants were free from arrests, and therefore he should not be deprived of them without his leave.*" *1 Lev. 152.* The king's junior clerk of the kitchen was taken in execution, and on motion was discharged. *Bartlett v. Habbis, 5 Term. Rep. 686. Vide 3 Shep. Abr. 351. Sed qu. upon capias utlagatum. Hetley, 52.*

Queen Dow.

Neither of the servants of a queen consort, or of a queen dowager, are privileged from an arrest. *Keb. 842. pl. 33. Starkie's case.*

Royal family,

It seems that none of the *Royal Family* are privileged from arrests, *merely as such*, nor princes of the blood, or peers of foreign states, and consequently none of their servants. *7 Co. 15. a. b. 16. a. 2 Inst. 48. 3 Inst. 30. pl. 19.*

Members of Parliament.

Members.

Privilege of parliament was principally established, in order to protect its members not only from being molested by their fellow subjects, but also more especially from being oppressed by the power of the crown. If therefore all the privileges of parliament were once to be set down and ascertained and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member and violate the freedom

freedom of parliament. The dignity and independence of the two houses are therefore in great measure preserved by keeping their privileges indefinite. Some however of the more notorious privileges of the members of either house are privilege of speech, of person, &c. *Vide 1 W. & M. ft. 2. c. 2.*

Privilege of parliament says *Prynne*, 624, is only a temporary immunity, which our kings grant to their necessary attendants, during parliament assemblies, against arrests and imprisonments of their persons, customarily and humbly demanded by the speaker of the house of commons from all our kings, at the beginning of every parliament, when presented by the house, in their own and the members behalf, and then freely and graciously granted to them by the king, as a matter of custom and ancient right. Since this, it hath been resolved, that such demand was not necessary, and the privilege subsisted notwithstanding. *D. Ewes's Journal* 122. *Sir Robert Atkin's Treatise of the Power of Parliament*, 40.

Granted at request of the speaker.

To assault by violence a member of either house, or his menial servants, is a high contempt of parliament, and there punished with the utmost severity. It has likewise peculiar penalties annexed to it in the courts of law by stat. 5 H. 4. & 11 H. 6. c. 11. Neither can any member of either house be arrested and taken into custody, without a breach of the privilege of parliament: "But any person may commence and prosecute any action or suit in any court of record, equity, or of admiralty, and in all causes matrimonial, and testamentary, against any peer, or lord of parliament of Great Britain, or against any of the knights of the house of commons, of Great Britain for the time being, or against their or any of their menial servants, or any other person intitled to privilege of parliament; and no suit, action, &c. shall be staid by or under colour of privilege of parliament, provided that nothing shall extend to subject the person of any of the knights, citizens, and burghesses, or the commissioners of shires, and

To assault a member or his menial servants high contempt.

Suits may be prosecuted against peers, and their servants.

But not to subject the persons of members of the house of commons to arrest.

Servants of
Peers.

All privileges
which derogate
from the com-
mon law, are at
an end, save the
person, and that
for forty days
after prorogation
and forty days
before next meet-
ing.

Pitt's case.

"burghs, of the house of commons of Great Bri-
tain: for the time being, to be arrested or impri-
soned upon any such suit or proceeding." 10

Geo. 3. c. 50 s. 2. Tho' the servants of peers ne-
cessarily employed about their persons and estates,
could not formerly have been arrested, 1 *Mod.* 146.
Sir. 1065, yet this privilege seems to have been
taken away by the above statute.

All other privileges, which derogate from the
common law, are now at an end, save only as to
the freedom of the *member's person*, and that for
40 days after every prorogation, and 40 days before
the next appointed meeting; which is now in effect as
long as the parliament subsists, it seldom being
prorogued for more than fourscore days at a time.
2 *Levinz.* 72.

Colonel Pitt was arrested two days after the
dissolution of the parliament, and he was discharg-
ed, it being held not a convenient time. *Sir.* 985.

Members not Privileged.

All other privi-
leges which ob-
structed the or-
dinary courts of
justice, restrain-
ed by statute.

Any trader hav-
ing privilege of
parliament, may
be served with
legal process,
and unless he
makes satisfac-
tion.

Persons outlaw-
ed.

No privilege for
any person keep-
ing a common
gaming-house.

As to all other privileges, which obstructed the
ordinary courts of justice, they were restrained by
the stat. 12 *W.* 3. c. 3. 2 & 3 *Anne*, c. 18 & 11
Geo. 2. c. 24. and now totally abolished by the
10 *Geo.* 3. c. 50. Likewise for the benefit of com-
merce, it is provided, by 4 *Geo.* 3. c. 33. that any
trader having privilege of parliament, may be
served with legal process for any just debt, (to the
amount of 100*l.*;) and unless he makes satisfaction
within two months, it shall be deemed an act of
bankruptcy; and that commissions of bankrupt
may be issued against such privileged traders, in
like manner as against any other.

Persons outlawed, should not be suffered to sit
in the parliament house. *Anders.* 293.

No privilege of parliament should be allowed to
any person whatsoever, against whom a prosecu-
tion or proceeding shall be commenced or had, for
keeping of any public or common gaming-house,
or any house, room or place, for playing at any
game

game prohibited by this, or any other act now in being, against excessive or deceitful gaming.
18 Geo. 2. c. 34. s. 7.

No member of the house of commons, acting as a public officer, hath any privilege of parliament, touching any matter done in the execution of his office. *Order of the house, 27 Nov. 1699, 2 & 3 Ann. c. 18. s. 1.*

No member acting as a public officer.

No co-partner in any trade or undertaking, is intitled to privilege, in respect to any matter relating to such co-partnership. By order of Friday, 9 April, 1742.

No co-partner in trade, is intitled to privilege.

The number of *English* representatives is, 513, (*viz.* 92 knights of shires, 50 citizens for 25 cities, *Esly* sending none, and *London* 4. 334 burgesses for 167 boroughs, 2 each, 5 for 5 boroughs, 1 each, and 12 for 12 boroughs, in *Wales*, *Pembroke*, sending 2, and *Merioneth* none; 4 for the 2 universities, and 16 for the 8 cinque ports.) And of *Scots*, 45, in all, 558.

Number of English members.

Embassadors.

Embassador or ambassador, is a minister sent from one sovereign prince, as a representative of his person, to another.

Embassadors.

The word is derived from the corrupt Latin, *ambasciator*, formed of *ambactus*, an old word borrowed from the *Gaulish*, signifying, servant, domestic, or officer. Such is the origin given by *Borel*, *Menage*, and *Chiflet*, after *Salmasius* and *Spelman*. In Latin, we call this kind of minister, *legatus*, or *orator*; though, it is certain, the word ambassador, with us, has a much more extensive signification, than that of *legatus* among the Romans; and excepting, that they are both under the protection of the law of nations, there is scarce any thing in common between them.

Derivation.

Embassadors in ordinary, are but of modern invention, and not above 200 years ago since they were first heard of; until then, all ambassadors were

were

were extraordinary, and retired as soon as they had dispatched the affair they were sent upon. The name of ambassador, *Cicero* observes, is sacred and inviolable: *Non modo inter sociorum jura, sed etiam inter hostium tela, incolume versatur. In Verr. Orat. 11.*

Embassadors,

An ambassador, is a person sent by one sovereign prince to another, to transact in the place of his sovereign, such matters as relate to both states: By the law of nations, none under the quality of a sovereign prince, can send ambassadors. *Molloy, 129.* And it is said by *Lord Coke, 4 Inst. 153.* that there can be no ambassador without letters of credence from his sovereign, to another that hath sovereign authority. If sent from a king or absolute potentate, though in his letters of credence, he is termed an agent, or *nuncius*; yet, he is an ambassador or legate. *4 Inst. 153.*

Rights and privileges determined by the law of nature and nations,

The rights, the powers, the duties, and the privileges of ambassadors, are determined by the law of nature and nations, and not by any municipal constitutions. For, as they represent the persons of their respective masters, who owe no subjection to the laws, but those of their own country; their actions are not subject to the controul of the private law of that state, wherein they are appointed to reside. He that is subject to the coercion of laws, is necessarily dependant on that power by whom those laws were made: But an ambassador ought to be independant of every power, except that by which he is sent; and of consequence, ought not to be subject to the mere municipal laws of that nation, wherein he is to exercise that function. If he grossly offends, or makes an ill use of his character, he may be sent home, and accused before his master, who is bound either to do justice upon him, or avow himself the accomplice of his crimes. *Sp. L. 21. 26.* But there is great dispute among the writers on the laws of nations; whether this exemption of ambassadors extends to all crimes, as well natural as positive;

positive; or whether it only extends to such as are *mala prohibita*, as coining, and not to such as are *mala in se*, as murder. Our law seems formerly to have taken in the restriction, as well as the general exemption. For it hath been held, both by our common lawyers and civilians, that an ambassador is privileged by the law of nature and nations; and yet, if he commits any offence against the law of reason and nature, he shall lose his privilege. 4 *Inst.* 153. 1 *Roll. Rep.* 175. 3 *Bul.* 27. And, that therefore, if an ambassador conspires the death of the king in whose land he is, he may be condemned and executed for treason; but, if he commits any other species of treason, it is otherwise, and he must be sent to his own kingdom. 1 *Roll. Rep.* 189. And these positions seem to be built upon good appearance of reason. For since, all municipal laws act in subordination to the primary law of nature; and, where they annex a punishment to natural crimes, are only declaratory of, and auxiliary to that law; therefore, to this natural, universal rule of justice, ambassadors, as well as other men, are subject in all countries; and of consequence, it is reasonable, that wherever they transgress it, there they shall be liable to make atonement. *Foss. Rep.* 188. But, however, these principles might formerly obtain, the general practice of this country, as well as the rest of *Europe*, seems to pursue the sentiments of the learned *Grotius*, p. 18. 4. 4. that the security of ambassadors, is of more importance, than the punishment of a particular crime. And therefore, few, if any, examples have happened within a century, where an ambassador has been punished for any offence, however atrocious in its nature.

In respect to civil suits, all foreign jurists agree, that neither an ambassador, nor any of his train or *comites*, can be prosecuted for any debt or contract in the courts of that kingdom where he is sent to reside. Yet, *Sir Edward Coke*, maintains, 4 *Inst.*

Van. Loeuwen,
in F. 40. 7. 17.
Barb. Puff. l. 8.
c. 9. §. 9. & 17.

Civil suits not to
be prosecuted
against him, or
his servants.

153. that, if an ambassador make a contract which is good, *jure gentium*, he shall answer for it here. But the truth is, so few cases (if any) had arisen, wherein the privilege was either claimed or disputed, even with regard to civil suits, that our law-books are silent upon it, previous to the reign of *Queen Anne*; when an ambassador from *Peter the Great, Czar of Muscovy*, was actually arrested and taken out of his coach in *London*, for a debt of 50*l.* which he had there contracted. Instead of applying to be discharged upon his privilege, he gave bail to the action, and the next day complained to the queen. The persons who were concerned in the arrest, were examined before the privy council, (of which lord chief justice *Holt* was at the same time sworn a member,) and seventeen were committed to prison, most of whom were prosecuted by information in the court of queen's bench, at the suit of the attorney general; and at their trial, before the lord chief justice, were convicted of the facts by the jury, reserving the question of law, how far those facts were criminal, to be afterwards argued before the judges; which question was never determined. In the mean time, the *Czar* resented this affront very highly, and demanded that the sheriff of *Middlesex*, and others concerned in the arrest, should be punished with instant death. But the queen (to the amazement of that despotic court) directed her secretary to inform him, "that she could inflict no punishment on any, the meanest of her subjects, unless warranted by the law of the land, and therefore was persuaded, that he would not insist upon impossibilities. To satisfy, however, the clamours of the foreign ministers, (who made it a common cause,) as well as to appease the wrath of *Peter*, a bill was brought into parliament, 1708, and afterwards passed into a law, to prevent and to punish such outrageous insolence for the future. And, with a copy of this act, elegantly engrossed and illuminated, accompanied by a letter from the queen, an ambassador

fador

fador extraordinary was appointed to appear at Moscow, who declared, "that though her majesty could not inflict such a punishment as was required, because of the defect in that particular of the former established constitutions of her kingdom; yet, with the unanimous consent of the parliament, she had caused a new act to be passed, to serve as a law for the future." This humiliating step was accepted as a full satisfaction by the Czar; and the offenders, at his request, were discharged from all further prosecution. Stat. 7 Ann. c. 12.

This statute declares, "that all actions and suits, writs and processes, that shall at any time hereafter be sued forth or prosecuted, whereby the person of any ambassador, or other public minister, of any foreign prince or state, authorised and received as such by her majesty, her heirs or successors, or the domestic, or domestic servant, of any such ambassador, or other public minister, may be arrested or imprisoned; or his, or their goods, or chattels, may be distrained, seized, or attached, shall be deemed and adjudged to be utterly null and void, to all intents, constructions, and purposes whatsoever. s. 3."

"That, in case any person or persons shall presume to sue forth or prosecute any such writ or process, such person and persons, and all attornies and solicitors, prosecuting and soliciting in such case; and all officers executing any such writ or process, being thereof convicted by the confession of the party, or by the oath of one or more credible witness or witnesses, before the lord chancellor, or lord keeper of the great seal of Great Britain, the chief justice of the court of queen's bench, the chief justice of the court of common pleas for the time being, or any two of them, shall be deemed violators of the laws of nations, and disturbers of the public repose, and shall suffer such pains, penalties, and corporal punishment, as the said lord chancellor, lord keeper, and the said chief justices, or any two of them,

All suits against ambassadors or other public ministers, received as such, shall be void, and their servants.

Punishment for attorney, &c. suing forth such process.

“ them, shall judge fit to be imposed and inflicted,
“ *s. 4.*”

No merchant,
“ &c. being a
bankrupt, to have
any benefit of
this act: Nor
the servant of an
embassador, un-
less his name be
registered, &c.

4 Burr. 2017.
3. Term.
Rep. 79.
1 Will. 20.

“ That no merchant or trader whatsoever,
“ within the description of any of the statutes
“ against bankrupts, who hath, or shall put him-
“ self into the service of any such embassador or
“ public minister, shall have, or take any manner
“ of benefit by this act; and that no person shall
“ be proceeded against, as having arrested the
“ servant of an embassador or public minister, by
“ virtue of this act, *unless the name of such servant*
“ *be first registered in the offices of one of the princi-*
“ *pal secretaries of state, and by such secretary trans-*
“ *mitted to the sheriffs of London and Middlesex, for*
“ *the time being, or their under-sheriffs or deputies,*
“ *who shall, upon the receipt thereof, hang up the*
“ *same in the public place in their offices, whereto all*
“ *persons may resort, and take copies thereof without*
“ *fee or reward. s. 5.*”

This act to be
taken as a public
act.

“ That this act shall be taken and allowed in
“ all courts within this kingdom, as a public act.
“ And that all judges and justices shall take notice
“ of it, without special pleading. And all she-
“ riffs, bailiffs, and all other officers and ministers
“ of justice concerned in the execution of process
“ are hereby required to have regard to this act,
“ as they will answer the contrary at their peril.
“ *s. 6.*”

In cases in Lord Talbot's time, *Forrester's Cases*
in *Eq. temp.* Lord Talbot, p. 281. I find a case in
which it is determined, who are deemed *embassa-*
dors, and *who are not*, which is as follows:

Whether a *consul*
has the privilege
of a public mini-
ster, and who are
embassadors.

Barbuit had a commission as agent of commerce
from the *King of Prussia* in *Great Britain*, in the
year 1717, which was accepted here by the *lords*
justices when the king was abroad. After the late
king's demise, his commission was not renewed
until 1735, and then it was, and allowed in a pro-
per manner; but with a recital of the powers given
him in the commission, and allowing him as such.
These commissions were directed generally to all
the

the persons whom the same shall concern, and not to the king: and his business described in the commission was, to do and execute what his *Prussian Majesty* should think fit to order with regard to his subjects trading in *Great Britain*; to present letters, memorials and instruments concerning trade, to such persons, and at such places as should be convenient, and to receive resolutions thereon; and thereby his *Prussian Majesty* required all persons to receive writings from his hands, and give him aid and assistance. *Barbuit* lived here near twenty years, and exercised the trade of a tallow-chandler, and claimed the privilege of an *ambassador* or *foreign minister*, to be free from arrests. After hearing counsel on this point.

Lord Chancellor.—A bill was filed in this court against the defendant in 1725, upon which he exhibited his cross bill, styling himself merchant. On the hearing of these causes the cross bill was dismissed; and in the other an account decreed against the defendant. The account being passed before the Master, the defendant took exceptions to the Master's report, which were over-ruled; and then the defendant was taken upon an attachment for non-payment, &c. And now, ten years after the commencement of the suit, he insists he is a *public minister* and therefore all the proceedings against him null and void. Though this is a very unfavourable case, yet, if the defendant is truly a *public minister*, I think he may now insist upon it; for, the privilege of a public minister, is to have his person sacred and free from arrests, not on his own account, but on account of those he represents; and this arises from the necessity of the thing, that nations may have intercourse with one another in the same manner as private persons, by agents, when they cannot meet themselves. And if the foundation of this privilege is for the sake of the prince by whom an ambassador is sent, and for sake of the business he is to do, it is impossible that he can renounce such privilege and protection: for,
by

Bill filed against defendant, and he files a cross bill, stating himself to be a merchant.

Defendant taken on an attachment and he insists that he is a public minister, and all proceedings void.

If he is a public minister, he may now insist on it.

Question.

Definition of the word ambassador.

Not necessary a minister's commission be general.

by his being thrown into prison, the business must inevitably suffer. Then the question is, "Whether the defendant is such a person as 7 Anne, cap. 10. describes?" which is only declaratory of the ancient universal *jus gentium*: The words of the statute are, (*ambassadors or other public ministers,*) and the exception of persons trading relates only to *their* servants; the parliament never imagining that the ministers themselves would trade. I do not think the words *ambassadors or other public ministers,* are synonymous. I think that the word *ambassadors* in the act of parliament, was intended to signify *ministers sent upon extraordinary occasions,* which are commonly called *ambassadors extraordinary*; and *public ministers* in the act, take in all others who constantly reside here; and both are intitled to these privileges. The question is, whether the defendant is within the latter words? It has been objected that he is not a *public minister*, because he brings no *credentials to the king*. Now, although it be true, that this is the most common form, yet it would be carrying it too far to say, that these credentials are absolutely necessary; because all nations have not the same forms of appointment. It has been said, That to make him a *public minister*, he must be *employed about state affairs*: In which case, if state affairs are used in opposition to commerce, it is wrong: but if only to signify the business between nation and nation, the proposition is right: for trade is a matter of state, and of a public nature, and consequently a proper subject for the employment of an *ambassador*. In treaties of commerce, those employed are as much *public ministers*, as any others; and the reason for their protection holds as strong: and it is of no weight with me that the defendant was not to concern himself about other matters of state, if he was authorised as a public minister to transact matters of trade. It is not necessary that a minister's commission should be general to intitle him to protection; but it is enough that he is to transact any one

one particular thing in that capacity, as every *ambassador extraordinary* is; or to remove some particular difficulties, which might otherwise occasion war. But what creates my difficulty is, that I do not think he is intrusted to transact affairs between the two crowns: the commission is to assist his *Prussian Majesty's* subjects here in their commerce; and so is the allowance. Now this gives him no authority to intermeddle with the affairs of the *king*; which makes his employ to be in the nature of a *consul*. And although he is only called an agent of commerce, I do not think the name alters the case. Indeed, there are some circumstances that put him below a *consul*; for he wants the power of judicature, which is commonly given to *consuls*. Also their commission is usually directed to the prince of the country; which is not the present case: but at most, he is only a *consul*.

The commission to assist the subjects here, which gives no authority to intermeddle with the king's affairs.

Some circumstances putting him below a *consul*.

It is the opinion of *Barbeyrac*, *Wincquefort*, and others, that a *consul* is not intitled to the *jus gentium*, belonging to *ambassadors*.

Opinion of writers a *consul* not intitled.

The law of nations does not take in *consuls*, or agents of commerce, though received as such by the courts to which they are employed. 4 Burr. 2015. *Heathfield v. Chilton*.

On a rule to shew cause why the bill of *Middefex* in each cause, should not be set aside, and the bail-bond cancelled.

English secretary bona fide, held to be a domestic servant within the act, although he was 8 years before a trader in *Ireland*, and having then bought silk in *England*, and sold it in *Ireland*.

On the part of defendant it appeared, and was sworn, that he was regularly appointed by Count *Hasslang* to be one of his *English* secretaries at 30 l. per ann. for board and lodging, &c. and he swore to actual attendance and service, at several times at the Count's house; and writing, copying, and carrying several letters and memorials: In short, the defendant's affidavits were so framed, that every thing was sworn that in *absolute strictness* could be required, to bring him within the description of a domestic servant to this minister.

On the part of the plaintiffs, it appeared, that Bath was a mercer in *Dublin*, about seven or eight years

It appeared defendant was a mercer in *Dublin*

7 or 8 years since, afterwards commissary of stores abroad and was now on half pay, &c.

Cases cited to shew that the nature of the service must be specified.

And what ought to be shewn.

It is not expected that every particular act of the service should be specified.

Bona fide service sufficient.

years ago; that he had afterwards been a *commissary of stores* abroad, and was now upon half pay as such, at 15s. per day; that he speaks only *English*; that he had never ate nor lodged in the Count's house, nor received any wages: (but as to the wages, it appeared that there were not yet so much as half a year's wages become due). It was also sworn, very generally, "that whilst he carried on trade in Ireland, he bought goods in England, and sold them in Ireland."

In shewing cause, several cases were cited to shew that the nature of the service must be specified, and that no one could have a right to claim this privilege, "who was not expressly and circumstantially shewn to be fairly, really, and bona fide a domestic servant in the actual service of the foreign minister, and actually performing the service to him, without collusion; and who is not a trader of any sort, or liable to be described as such." *Widmore v. Alvarez*, Sir. 797. *Fitzgib.* 200. *Holmes v. Gordon*, M. 7 Geo. 2. B. R. *Brettell v. Caroline*, 17 & 18 Geo. 2. B. R. The case of a gardener to a foreign minister who had no garden, the case of Rev. Mr. *Shorthouse* who claimed the privilege as chaplain to the Morocco ambassador, a Mahomedan, and *Johnson v. Stewart*, M. 1750. 2 Geo. 2. B. R. which prove that the nature of the service must be particularly shewn. *Dodsworth v. Anderson*. Sir T. Raym. 375. Sir T. Jon. 141. where *Grice* who bought goods in England, and sold them in Ireland, was holden to be a bankrupt in England.

Lord Mansfield—It is not to be expected that every particular act of the service should be particularly specified: it is enough if an actual bona fide service be proved. And if such a service be sufficiently proved by affidavit, we must not, upon bare suspicion only, suppose it to have been merely colourable and collusive. As to that of his being a trader; his having been so in Ireland (and even that seven years ago too) will not bring him within the exception of the 5th clause of this act.

There

There is no colour for bringing this case within that of *Dodsworth v. Anderson*. For here is no connection between the goods bought in *England* and those sold in *Ireland*. It does not appear they were the same goods: neither is any time specified, when they were bought, or when sold. Rule absolute. *Peach and another v. Bath*, 3 Burr. 1478.

On shewing cause why the defendant should not be discharged out of the custody of the marshal (upon 7 Anne, c. 12.) as a domestic servant to Paul Pier Russell, minister from the Prince Bishop of Liege.—“He swore himself to be *bona fide* English secretary to him, and to have been *bona fide* hired by him as such, and to have *bona fide* received wages, as they became due, at the rate of 30 l. per ann.” Both the minister himself, and the relation of this man to him, were objected to.

Defendant English secretary to the minister from the Prince Bishop of Liege.

Affidavit of the defendant.

But Chilton's own affidavit was positive, as to the service, and that it was real and not colourable: and it was confirmed by a Mr. Chamberlayne, who called himself secretary. He also swore that he was not an object of the bankrupt laws. He had been house steward to Lord Northampton. No certificate was produced under the hand and seal of the minister; though the application was made (as the attorney alledged) on the part of the minister: Nor was it sufficiently sworn, that the defendant was in the service of the minister at the time when he was arrested.

Defendant's own affidavit positive as to the service.

Lord Mansfield—The privileges of public ministers and their retinues depend on the law of nations: which is part of the common law of *England*. And the act of parliament, 7 Anne, c. 12. did not intend to alter nor can alter the law of nations. His lordship recited the history of the act, and the occasion of it, and referred to the annals of the time. He said there is not one of the provisions in that act which is not warranted by the law of nations.

Privileges of public ministers part of the law of nations.

Act did not alter the law of nations.

Not one provision in the act, but warranted by the law of nations.

The law of nations will be carried as far in *England* as any where; because the crown can do

The law of nations carried as far in *England* as any where, and why.

no particular favours, affecting the rights of suitors, in compliment to public ministers or to satisfy their points of honour.

The law of nations does not give protection to screen persons who are not *bona fide* servants.

The law of nations though it be liberal, yet does not give protection to screen persons who are not *bona fide* servants to public ministers, but only make use of that pretence in order to prevent their being liable to pay their just debts.

Does not take in consuls, or agents of commerce.

The law of nations does not take in *consuls*, or *agents of commerce*; though received as such by the courts to which they are employed. This was determined in *Barbuit's case* in *Chancery* which was solemnly argued before and determined by Lord *Talbot*, on considering and well weighing *Barbeyrac*, *Binckershoek*, *Grotius*, *Winequestort*, and all the foreign authorities: for there is little said by our own writers, on this subject.

Not an ambassador.

If I did not think there was enough in the present case already appearing to the court, to enable us to form an opinion, I should desire to know in what manner this minister was *accredited*. Certainly, he is not an *ambassador*; which is the first rank. *Envoy*, indeed, is the second class: but he is not shewn to be even an *envoy*. He is called "*minister*," 'tis true: but *minister* (alone) is an equivocal term.

Not an application by the Attorney General.

I find this is not an application by the *Attorney General*, by the direction and at the expence of the crown. That, indeed, would have shewn, the crown thought this person intitled to the character of a public minister. It now remains uncertain what his proper character is.

If a minister of such a kind as intitles him to privilege, not a case of privilege.

But supposing him to be a minister of such a kind as intitles him to privilege; yet I think, this is not a case of privilege by the law of nations: for, the defendant does not appear to have been in the service of the minister at the time of the arrest.

A public minister not to take a man from the custody of the law.

A public minister shall not take a man from the custody of the law: though the process of the law shall not take his menial servant out of *his* service.

Here

Here, it is not sworn when the defendant came into the service. And upon the manner of swearing here used, the court must take it. "*That he was not in the minister's service at the time of the arrest.*"

Mr. Justice Aston concurred—The rule laid down by Lord Mansfield is a very right one. The process of the law shall not, indeed, take a person out of the service of a public minister: but on the other hand, a public minister cannot take a person out of the custody of the law. If a man has no such privilege at the time of his being arrested; no subsequent privilege can be given him, by being afterwards taken into the service of a public "minister."

Therefore, as it does not appear here, that the defendant was then in the service, he cannot be intitled to his privilege.

This is a true and right principle, and the establishing it may prevent many of these applications.

Lord Mansfield took occasion to observe, that the registering the name of the defendant in the secretary of state's office, and transmitting it to the sheriff's office, (mentioned in the fifth section,) relates only to the bailiff who arrested him; and is no condition precedent to the being intitled to the privilege of a public minister's servant. In this, Mr. Justice Aston also concurred.

Rule discharged. 4 Burr. 2015. *Heathfield v. Chilton.*

On a rule to shew cause why execution should not be set aside, and the goods taken restored; the facts appeared; that the defendant had been protected by the Morocco ambassador; upon whose departure from England the plaintiff proceeded against the defendant, being then unprotected, and obtained judgment against him. The defendant brought a writ of error. Whilst this writ of error was depending, viz. on 14th June 1764, he was hired to Count Hofsang, the Bavarian minister, as his physician, at 40 l. a-year salary; though Doctor Redmond then stood upon the list, as physi-

Privilege claimed as domestic physician to a public foreign minister, disallowed, it being a mere scheme to screen him from paying his debt.

cian to Count Haslang; and even still remains upon the list, as such. The defendant swore that he had prescribed to some of the Count's servants; and he also swore, that since the said 14th June 1764, he never prescribed to any other persons than the Count's family. It appeared that the defendant kept a coach, and had livery servants of his own. It appeared, that he had formerly been a trader; but had left off: but it was not ascertained where, or for how long time he had practised as a physician. Soon after he was hired to Count Haslang, the Count's own secretary sent to the sheriff of Surrey, (who had an execution against the defendant,) to acquaint him "that the defendant was protected by Count Haslang."

What the privilege extends to,

Lord Mansfield—The privilege of a foreign minister extends to his family and servants; and this privilege has been long settled to extend to the servants who are natives of the country where he resides, as well as to his foreign servants, whom he brings over with him. By the law of nations, a foreign minister cannot give a protection to a person who is not *bona fide* of his family.

Who he cannot protect.

Person in debt cannot be protected.

Binkershoek de foro legatorum, says, that a person in debt cannot be taken into the service of a foreign minister, in order to protect him. And indeed this would give the foreign minister a power to dispense with the private debts of the subjects of this country. 3 Burr. 1676. *Lockwood v. Dr. Coysgarne*.

Clerk no servant.

A person living as a clerk, is no domestic servant. *Barnes*, 264. *Pract. Reg. C. P.* 14.

Of Officers of both Houses, Clergymen, Sergeants at Law, Barristers, Officers of Courts, and Attornies.

Assistant officers of both houses.

Assistant officers of both houses of parliament, who repair to parliament by the king's writ of summons or upon legal elections, returns, and continually attend therein, to discharge their duties, during the whole session of parliament, till its dissolution, and that during their stay, coming, and

and return from it to their homes are privileged. *Prynne*, 4. pt. *Reg. of Writs*, 690. Also the serjeants at arms, and door-keepers, clerks and such like. *Crompt.* 11.

This venerable body of men, being separate Clergymen. and set apart from the rest of the people, in order to attend the more closely to the service of almighty God, have thereupon large privileges allowed them by our municipal laws; and had formerly much greater, which were abridged at the time of the reformation on account of the ill use which the Popish clergy had endeavoured to make of them. For, the laws having exempted them from almost every personal duty, they attempted a total exemption from every secular tie. But it is observed by Sir *Ed. Coke*, 2 *Inst.* 4. that as the overflowing of waters doth many times make the river to lose its proper channel, so in times past, ecclesiastical persons, seeking to extend their liberties beyond their true bounds, either lost or enjoyed not those which of right belonged to them. The personal exemptions indeed, for the most part, continue; for a clergyman cannot be compelled to serve on a jury, nor to appear at a court leet, &c. nor be chosen to serve any temporal office, in regard of his own continual attendance on the sacred function. *Finch. L.* 88. *During his attendance on divine service*, and not merely staying in the church with a fraudulent design, is for the time, *privileged from arrests.* stat. 50 *Ed.* 3. c. 5. 1 *R.* 2. c. 16. And by stat. 8 *H.* 6. c. 1. which recites, "forasmuch as the prelates and clergy of the realm of *England*, called to the convocation, and their servants and familiars that come with them to such convocation, oftentimes and commonly be arrested, molested and inquieted; our lord the king willing graciously in this behalf, to provide for the security and quietness of the said prelates and clergy, at the supplication of the same prelates and clergy, and by the assent of the great men and commons afore-

Clergymen called to the convocation privileged, *quando mandando & indeundo.*

" said, hath ordained and established, that all the
 " clergy from henceforth to be called to the con-
 " vocation by the king's writ, and their servants
 " and familiars shall for ever hereafter fully use
 " and enjoy, such liberty or defence in coming,
 " tarrying and returning, as the great men and
 " commonalty of the realm of *England*, called or
 " to be called, to the king's parliament, do enjoy,
 " and were wont to enjoy, or in time to come
 " ought to enjoy." *Eq. Cas. Abrid.* 349. *A. pl.*
1. 3 Chan. Rep. 22. *Prynne*, 644. *Finch*. 140.

Judges.

It is said in *Crompt. Juris. of C.* 11. 2 *Sid.* 31.
 That the judges, their necessary servants, goods
 and chattels, shall not be arrested, or taken, but
 in case of treason or felony: but in *Lord Ray.* 339.

Their clerks.

" Judges' clerks may be arrested." *Pract. Reg.*
C. P. 380.

Serjeants at law.

Serjeants at law are not privileged from arrests
 in the superior courts; but they cannot be arrest-
 ed in an inferior one. *Cro. Car.* 84, 85. 2 *Lev.*
 129. *Fraeman*, 389. 2 *Mod.* 296. *Lord Raym.*
 399. *Serjeant Scrogg's Case*, *M.* 26 *Car.* 2. in
C. B. nor barristers.

Barristers.

Corporations.

Corporations are privileged from arrests, and of
 course from outlawries, no *capias* lying against them.

Officer of court.

Officers of courts are privileged from arrests,
 but this privilege is in respect of their necessary at-
 tendance on those courts. 1 *Sand.* 67. If the
 sheriff arrests an attorney, he cannot discharge
 him on a writ of privilege, for he must plead it
sub pede sigilli. 2 *Black Rep.* 1085. But a writ
 of privilege will discharge him if he is arrested
 in an inferior court. 2 *Black. Rep.* 1087.

If attorney ar-
 rested must put
 in bail and plead
 his privilege.

Sheriff cannot
 take notice of
 such privilege.

The sheriff cannot take notice of their privilege,
Ca. Lit. 131. 1 *Salk.* 2. *Doug.* 671. but he may
 apply to be discharged if process issued out of the
 same court on common bail. 1 *Wils.* 298. But he
 must shew in his affidavit that he practised within
 a year previous to the arrest. *Dyson v. Birch one*,
&c. Pull. v. Bosanq. Term Rep. C. P. 4. and
quare his having obtained a certificate.

The

The right of being exempted and freed from arrests by process of other courts, belongs to the Lord Chancellor or keeper and to all the masters.

Crompt. Jur. of C. 48. *b. Skin.* 521. Curstors, ministers, and known clerks of the court of chancery, and to the menial servants of the chancellor, or keeper, and of the ministers and officers. *Ord. of Chan.* 22 Dec. 5 Car. 1629. *Pract. Reg. in Chan.* 284.

Clerk of the pells shall have privilege. *Comb.* 482. Curstors clerk. *Skin.* 521. Auditor of the exchequer, and his servants, commissioners of the treasury, garter, king of heralds, receiver general of the revenues, clerk of the remembrancer, and an attorney of the exchequer, are intitled to privilege. *Stand.* 164. 2 *Sid.* 164. p. 3. *Andr.* 46. 2 *Show.* 299. *Sav.* 131. pl. 204. *Order of the house of commons*, 27 Nov. 1699, 2 & 3 Ann. c. 18. s. 1.

The marshall and warden of the Fleet are not to be arrested. 1 *Vent.* 65.

If an attorney is attending on a judge's summons, the master of the K. B. or prothonotary to tax costs, I take it the officer must not arrest him. *Barnes*, 278. *Rep. C. B.* 140. nor on the execution of a writ of inquiry. *Barnes*, 173.

Lord Chancellor and the masters.

Curstors, &c.

Auditor of the exchequer and other officers.

Marshall and warden.

Attorneys when protected.

Witnesses.

As the courts of justice are open to all, so the law protects the persons of those who come to attend them, both in going thither, and returning; but in this case, the defendant must appear in person, that the court may examine him and that they may be satisfied upon his oath, that he was either prosecuting or defending some suit pending in that court, when he was arrested. *Gilb. C. P.* 207.

So if the court give either plaintiff or defendant leave to go after evidence in any cause depending in that court, and he be arrested, he shall have privilege.

2 *Roll. Abs.* 272.

Plaintiff or defendant.

privilege. *Ibid.* Otherwise, if he go without permission. *Ibid.*

A general rule
respecting wit-
nesses.

In *Meekin's v. Smith*, 1 *H. Black. Rep.* 636. the court laid down this general rule: that all persons who had relation to a suit, which called for their attendance, whether they were compelled to attend by process or not, (in which number *bail* was included,) were intitled to privilege from arrest *eundo et redeundo*, provided they came *bona fide*. 11 *Ed.* 4. 3 *Barn.* 27. But if one who comes to justify as bail be an *uncertificated* bankrupt, he is not privileged. *Ibid.* A barrister was arrested on the circuit and discharged, *Ibid.*

How long party
is protected.

A party who has attended his cause all day in court, and in the evening retires with his witnesses, to a tavern in *Palace-yard*, held to be privileged from arrests, *causa redeundi*. 2 *Black. Rep.* 1113.

Witnesses.

Courts of justice, not only protect the parties themselves, but also their witnesses, *eundo & redeundo*, properly subpoenaed, to attend the trial, and give evidence: For, since they are obliged to appear by the process of the court, they will not suffer any one to be molested, whilst he is paying obedience to the writ. 1 *Moor*, 65. Courts not only protect the person, but likewise all the things that are necessary for his journey; but not merchandise or goods for sale. 2 *Roll.* 273. 3 *H.* 6. 4. The witnesses must have a reasonable time allowed them to get home; therefore, it was held, that the court could not try all niceties of delays that might possibly happen: Therefore, an attachment was granted against the plaintiff and the bailiff, for arresting a woman who attended *Winchester* affizes. The trial ended on *Friday*, and she set off on Saturday home to *Portsmouth*, and in her journey was arrested. 2 *Str.* 986.

Not only pro-
tect person, but
all things neces-
sary for his jour-
ney.

Jurors,

As jurors are summoned by the process of the court, they are equally obliged to appear there; and therefore, are no more to be molested, whilst they are obeying the commands of the court, than witnesses, &c.

Witnesses

Witnesses properly summoned before commissioners of bankrupt, or other commissioners under the great seal, are privileged from arrests, 1 *Alt.*

54.

But the court refused to discharge a person in custody by process of the sheriff's court, because he was arrested while attending commissioners of bankrupt to prove a debt. 4 *Term. Rep.* 377, *Kinder v. Williams*. The court said, the general rule was founded on the contempt of the court, by the arrest of persons who were giving their necessary attendance upon it. Here the contempt was to the commissioners, and not to this court, and even the process under which the arrest was made, was sued out of another court, and it could not vary the case; that the cause was afterwards removed, nor were they satisfied the commissioners of bankrupts could be considered as a court of justice, or could afford any relief in the premises.

Witnesses attending commissioners of bankrupt.

When refused.

Commissioners of bankrupt.

Bankrupt.

By statute 5 *Geo. 2. c. 30.* "Every bankrupt shall be free from arrests, in going and coming to surrender to the commissioners, and from actual surrender for forty two days, or such further time as shall be allowed to finish his examination, (provided he is not in custody at the time of surrender,) and, if he be arrested for debt, or on any escape warrant coming to surrender, or after surrender, within the time before mentioned; then on producing the summons, or notice, under the hands of the commissioners or assignees, and giving the officer a copy thereof, he shall be discharged; and in case any officer shall detain such bankrupt, such officer shall forfeit to such bankrupt for his own use, 5*l.* for every day he shall detain him." *s. 5 (a).*

Bankrupt is free for 42 days, or such further time as shall be allowed to finish his examination, if not in custody previous to surrender.

(a) This is a particular privilege, to enable them to surrender, and till their actual surrender, is confined to the act of going with their view; not a general privilege during the whole time which the act allows. *Cowp. R.* 156.

Seamen

*Seamen and Soldiers.***Seaman.**

No seaman is liable to be arrested or taken out of his majesty's service, unless the debt amounts to 20*l.* 1 *Geo.* 2. c. 14. s. 15.

A seaman on the ship's books, though he has absented himself, is a seaman within the act. *Barnes*, 95.

Volunteer soldier.

Nor shall any volunteer soldier be liable to be taken out of his majesty's service by any process or execution, unless for a real debt of 20*l.* 39 *Geo.* 3.

Construction of the act.

These acts have been construed to extend, not merely to common soldiers and troopers in the life-guards, but also to non-commissioned or warrant officers, as gunners, 1 *Str.* 7. serjeants and drummers, 1 *Will.* 216. These acts do not extend to commissioned officers, nor to soldiers for disobeying orders of justices, or on any other criminal account.

2 T. R. 270.

5. T. R. 156.

Wales and Counties Palatine.

Wales, or counties palatine, not to arrest under 20*l.*

“ No sheriff or other officer within the principality of *Wales*, or counties palatine, upon any writ or process issuing out of any of his majesty's courts of record at *Westminster*, shall hold any person to special bail, unless affidavit be first made in writing, and filed, in that court out of which such writ or process is to issue, signifying the cause of action, and that the same is 20*l.* and upwards; and when the cause of action is 20*l.* bail shall not be taken for more than the sum expressed in such affidavit.” 11 & 12 *W.* 3. c. 9. s. 2.

Bail for no more than sum expressed.

If court awards process to the sheriff, without cause, sheriff on arrest not punishable.

It the court shall award process to the sheriff, to arrest or take another without cause, and the arrest is

is made, the sheriff or his officers are not punishable. 20 H. 6. 5. But it must be issued out of a court that hath jurisdiction. 10 Co. 76. *judicium a non suo judice datum, nullius est momenti*. For the sheriff is bound at his peril, to take knowledge of the law: *Ignorantia juris non excusat ministros legis*.

It has been holden, that tho' certificated-bankrupts, or persons discharged under insolvent acts, are privileged from arrests, yet the sheriff or his officer is not liable to an action of false imprisonment, for arresting them. *Tarlton v. Fisher*, Dougl. Rep. 671. Buller J.—The general law as to sheriffs is, that if a sheriff has acted in obedience to the mandate of the court, he is excused. If he arrest a peer, the writ is erroneous, yet he is not a trespasser for executing it: and Lord Mansfield says, the sheriff is not bound not to arrest. *Ibid.* 675.: and in the case of *Cameron v. Lightfoot* 2 Black. Rep. 1190. it is said, that privilege will not be allowed, but in fair cases; and even then trespass will not lie for the arrest.

Sheriff not liable to false imprisonment if he arrest a bankrupt.

Peer.

Regulations after Arrest.

The abuses of goalers and sheriff's officers, towards the unfortunate persons in their custody, are well restrained and guarded against, by statute 32 Geo. 2. c. 28. which enacts, "That no sheriff, " under-sheriff, bailiff, serjeant at mace, or other " officer or minister whatsoever, shall at any time " or times hereafter, convey or carry, or cause to " be conveyed or carried, any person or persons, " by him or them arrested, or being in his or their " custody, by virtue or colour of any action, " writ, process or attachment, to any tavern, " ale-house, or other public victualling or drinking- " house, or to the private house of any such officer or minister, or of any tenant or relation of " his,

Abuses of goalers, &c. rectified.

Officer may not carry his prisoner to any tavern, &c. without his consent.

nor charge him
for liquor, &c.
other than such
as he shall freely
and particularly
call for; nor de-
mand for caption
or attendance
any other than
his legal fee,

nor exact any
gratuity, money,
&c. nor carry h s
prisoner to goal
within 24 hours
after his arrest,
unless, &c.

his, without the free and voluntary consent of
the person or persons so arrested or in custody;
nor charge any such person or persons with any
sum of money, for any wine, beer, ale, victuals,
tobacco, or any other liquor or things, save
what he, she, or they, shall call for of his, her,
or their own free accord; nor shall cause or
procure him, her or them, to call or pay for
any such liquor or things, except what he, she,
or they shall particularly and freely ask for; nor
shall demand, take or receive, or cause to be
demanded, taken or received, directly or in-
directly, any other or greater sum or sums of
money, than is, or shall be by law allowed to
be taken or demanded for any arrest, or taking,
or for detaining, or waiting, till the person or
persons so arrested or in custody, shall have
given an appearance or bail, as the case shall
require, or agreed with the person or persons,
at whose suit or prosecution, he, she, or they,
shall be taken or arrested, or until he, she, or
they, shall be sent to the proper gaol belonging
to the county, riding, division, city, town,
or place, where such arrest or taking shall be;
nor shall exact, or take any reward, gratuity,
or money for keeping the person or persons so
arrested or in custody, out of goal or prison;
nor shall carry any such person to any goal or
prison *within four and twenty hours from the
time of such arrest*, unless such person or persons
so arrested, shall refuse to be carried to some
safe and convenient dwelling house of his, her,
or their own nomination or appointment, with-
in a city, borough, corporation, or market-
town (a); in case such person or persons shall be
there arrested, or within three miles from the
place where such arrest shall be made, if the

(a) The reason why they shall not be carried to prison sooner is,
that they may have an opportunity of procuring bail, or of agreeing
with the plaintiff: This clause therefore can only apply to those
persons who are *bailable*.

" same shall be made out of any city, borough,
 " corporation, or market-town, so as such dwell-
 " ing house be not the house of the person arrested,
 " and be within the county, riding, division, or
 " liberty, in which the person under arrest was
 " arrested; and then, and in such case, it shall be
 " lawful to, and for any such sheriff, or other
 " officer or minister, to convey, or carry the per-
 " son or persons so arrested, and refusing to be
 " carried to such safe and convenient dwelling
 " house as aforesaid, to such goal or prison as he,
 " she, or they may be sent to, by virtue of the
 " action, writ, or process against him, her, or
 " them." *f. 1.*

" That no sheriff, under-sheriff, bailiff, ser-
 " jeant at mace, or other officer or person, shall
 " at any time or times hereafter, take or receive
 " any other or greater sum or sums for one or more
 " nights' lodging, or for a day's diet, or other
 " expences of any person or persons under arrest,
 " on any writ, action, attachment or process,
 " other than what shall be allowed as reasonable
 " in such cases by some order or orders already
 " made, or which shall hereafter be made by the
 " justices of the peace, at some general or quarter-
 " sessions, which shall be held for the county,
 " riding, division, city, town, or place, where
 " such arrest or taking shall be, who are hereby
 " authorised and required with all convenient ex-
 " pedition, to make some standing order or orders
 " for ascertaining such charges and expences with-
 " in their respective counties, ridings, division,
 " cities, towns, and jurisdictions, if the same have
 " or hath not been already there made; and if
 " any such order or orders hath or have been there
 " already made, such justices for the time being,
 " at their respective general or quarter-sessions,
 " are hereby authorised and required to vary or
 " alter the same, from time to time, as they shall
 " see occasion; and also, are hereby required to
 " cause a copy of every such order, and of every
 " variation

Nor may officer
 take for the diet,
 lodging, and other
 expences of such
 prisoner, more
 than shall be al-
 lowed by an or-
 der of the justi-
 ces.

A copy whereof
 is to be hung up
 in some conspic-
 uous part of the

session's house,
or other proper
place.

“ variation or alteration thereof, signed by the
“ clerk of the peace of every such county, riding,
“ division, city, town, or place respectively, to
“ be put and kept in some conspicuous place in
“ the session's house, or some other proper place
“ of every such respective country, riding, division,
“ city, town, or place, as such justices shall order,
“ so as the same may be there seen and examined,
“ as occasion may require.” s. 2.

Provisions con-
fined to *mesne*
process only.

These provisions are confined to persons arrested
on *mesne process*; the intent of them being, that
such persons may have an opportunity of procuring
bail, or of agreeing with the plaintiffs, and it has
accordingly been determined, that a sheriff's officer
is not liable to the penalties of the statute, for carry-
ing a defendant taken in *execution* to prison, within
24 hours after the arrest. *Evans v. Atkins*, 4. Term.
Rep. 555.

Execution.

As to the time.

No time is limited, within which a defendant
arrested on *mesne process*, should be carried to the
county goal by this act. But it seems to be the duty
of the sheriff, if possible, to carry the defendant to
the county goal, by the return of the writ on which
he was arrested, afterwards the sheriff keeps him
at his peril, in case the creditor is delayed. *Planck*.
v. Anderson, 5 Term Rep. 41. And where the
sheriff, having arrested a defendant on *mesne process*,
keeps him in his custody after the return of the
writ, and then carries him to prison, he is not
liable to an action on the case as for an escape, if
the jury find, that the plaintiff had not been delayed,
or prejudiced in his suit. *Ibid.* 37. (a).

Sheriffs and the
secondaries to
deliver printed
copies of these
clauses to bail-
iffs, &c.

And to the intent that no person may suffer by
reason of his ignorance of the provisions made by
this act, it is further enacted, “ That all and every

(a) The writ sued 11 Jan. 1792, returnable the 20th, a renewed
writ was sued the 20th, returnable in 8 days of the purification.
A writ of *ba. corp. cum causa* was brought, dated 28th November
1791, returnable immediately, but not delivered to the sheriff till
about 20th January 1792; and in fact the defendant was not brought
up nor committed till 21st April, the day before effoign day of
Easter Term.

“ sheriff,

" sheriff, under-sheriff, and bailiff of any liberty,
 " and also the respective secondaries and clerk sit-
 " ters in the respective compters in *London*, and
 " all other persons entrusted with the execution
 " of process, or who shall enter any actions, or
 " make any warrant or warrants, or any writ or
 " process, in order to have the same executed, shall
 " deliver a printed copy of the several clauses con-
 " tained in this act relating to bailiffs, serjeants,
 " and other officers and persons who shall be em-
 " ployed under them respectively to execute any
 " writ, process or attachment, or who shall arrest
 " any person on any action which shall be entered,
 " or otherwise, within their respective jurisdictions,
 " to every such bailiff, serjeant, officer, and other
 " person, and shall make it the condition of every
 " security or bond which shall be given or made
 " to any such sheriff or under-sheriff, or bailiff of
 " any liberty, by any bailiff, serjeant at mace, or
 " other officer or person, who shall be employed
 " or intrusted to execute any such writ or process
 " as aforesaid, under him, them, or any of them,
 " that every such bailiff, serjeant at mace, or of-
 " ficer, and other person respectively, shall and
 " will shew and deliver a copy of the said clauses
 " to every person he shall arrest by virtue of any
 " process, action, writ or attachment, or under
 " any warrant made out thereon, and carry or go
 " with to any public or other house where any li-
 " quor shall be sold; and also shall and will per-
 " mit every such person who shall be so arrested,
 " or any friend of him or her, to read over the
 " same clauses, before any liquor, meat or victuals,
 " shall be at any such public or other house called
 " for, or brought to any such person who shall be
 " so under arrest there; and in case any bailiff,
 " serjeant at mace, or other officer or person shall
 " in any respect offend in the premises, every such
 " offence, besides the breach of the condition of
 " every such security bond, shall be accounted and
 " deemed a misdemeanor in the execution of the

And make it a
 part of the con-
 dition of the
 bond, &c. that
 they shall shew,
 &c. if carried to
 a public house,
 and permit him
 or his friend to
 read over the
 same, before any
 liquor or victuals
 be brought or
 called for

Sheriffs and
gaolers to allow
debtors in custo-
dy to send for, or
have brought to
them, victuals
and beer from
what place they
shall think fit.

And to have and
use such bedding,
&c.

Not to take
more than what
is mentioned in
the list, or table
of fees settled
by the act.

“ process or action on which such person was ar-
rested, and shall be punishable as such, by vir-
tue of this act.” /s. 3.

“ That every sheriff, under-sheriff, bailiff of
any liberty, gaoler and keeper of any prison or
gaol, or any other person or persons to whose
custody or keeping any one hath been or here-
after shall be arrested, taken, committed, or
charged in execution, by virtue of any writ, pro-
cess or action, or attachment, shall at all times
hereafter permit and suffer every such person and
persons, during his, her, or their respective con-
tinuance under arrest or in custody, or in execu-
tion for any debt, damages, costs, or contempt,
at his, her, or their free will and pleasure, to
send for, or have brought to him, her, or them,
at reasonable times in the day-time, any beer,
ale, victuals, or other necessary food, from what
place he, she, or they, shall think fit, or can have
the same; and also to have and use such bedding,
linen, or other necessary things, as he, she, or
they, shall have occasion for and think fit, or
shall be supplied with, during his, her, or their
continuance, under any such arrest or commit-
ment, without purloining or detaining the same,
or any part thereof, or inforcing, or requiring
him, her, or them, to pay for the having or using
thereof, or putting any manner of restraint or
difficulty upon him, her, or them, in the using
thereof, or relating thereto; and no such pri-
soner or prisoners shall pay any thing in respect
thereof to any such sheriff, under-sheriff, bailiff
of any liberty, gaoler, keeper, or other person as
afore said.” /s. 4.

And that no gaoler or keeper of any prison, or
other person thereto belonging, shall demand, take
or receive, directly or indirectly, of any prisoner
or prisoners, for debt, damages, costs, or contempt,
any other or greater fee, or fees whatsoever, for
his, her, or their commitment, or coming into
gaol, chamber rent there, release, or discharge, than
what

what shall be mentioned, or allowed in the list, or table of fees settled, inrolled, and registered according to the directions of the said act. *f.* 12.

And for the more speedy punishing of gaolers, bailiffs, and others employed in the execution of process, for *extortion*, or other abuses in their respective offices and places, it is further enacted, that upon the petition in *term time* of any prisoner, or person being, or having been under arrest, or in custody, complaining of any exaction or extortion by any gaoler, bailiff, or other officer or person, in or employed in the keeping, or taking care of any gaol, or prison, or other place, where any such prisoner, or person under, or having been under, arrest, or in custody, by any process, or action, is, or shall have been carried, or in respect of the arresting, or apprehending any person, or persons, by virtue of any process, action, or warrant, or of any other abuse whatsoever, committed or done in their respective offices, or places, unto any of his Majesty's courts of record at *Westminster*, from whence the process issued, by which any person who shall so petition was arrested, or under whose power or jurisdiction any such gaol, prison, or place is; or in vacation time, to any judge of any such courts at *Westminster*, from whence any such process so issued; or to the judges of assize, &c. are by the said act authorised and required to hear and determine the same, in a summary way, and to make such order thereupon, for redressing the abuses which shall by any such petition be complained of, and for punishing such officer, or person complained against, and for making reparation to the party, or parties injured, as they shall think just, together with the costs of every such complaint; and all orders and determinations which shall be thereupon made, by any of the said courts, &c. shall have the same effect, force, and virtue, as other orders of the same courts, &c. and obedience thereto may be enforced in like manner by attachment or otherwise. *f.* 11.

If gaolers extort more money than allowed, may petition in term.

to any of the courts at *Westminster* from whence process issued, or in vacation to any judge who is to make order.

Costs.

Offence against
this act forfeit
50*l*.

And that every *sheriff, under-sheriff, bailiff of any liberty, bailiff, serjeant at mace, gaoler, and other officer*, and person as aforesaid, who shall in any wise offend against the said act, shall for every such offence (over and above such other penalties or punishment as he may be liable unto) forfeit and pay to the party thereby aggrieved, the sum of 50 *l*. to be recovered with treble costs, by action of debt, &c. in any of his majesty's courts of record. *f. 12.*

Sheriffs to take
no reward.

Sheriffs and their officers ought to take no reward, or other thing for doing of their office, but only of the king, or that which is appointed for them to take by the statutes, (and laws of this land,) and if they do otherwise, it is extortion in them. *3 E. 1. c. 26. 20 E. 3. c. 6. 1 H. 4. c. 11. Co. L. 368. 23 H. 6. c. 9. Pl. 465.*

The fees as now
settled for arrest.

The fees settled by the last act are much altered: for the arrest on mesne process in town, the master allows 10*s*. 6*d*., in the country 1*l*. 1*s*., and if taken to gaol at a distance, 1*s*. per mile.

Fees to the she-
riffs in *Wales*.

See the statute 34 *H. 8.* respecting fees to be taken in *Wales*.

Bail.

Definition of
bail.

BAIL, *ballium*, (from the French *bailler*, which comes from the Greek *βαλλειν*, and signifies to deliver into hands,) is used in our common law, for the freeing or setting at liberty of one arrested or imprisoned upon any action, either civil or criminal, on surety taken for his appearance, at a day and place certain. *Bract. lib. 3. Tract. 2. c. 8.*

Why called bail.

The reason why it is called *bail* is, because by this means the party restrained is delivered into the hands of those that bind themselves for his forthcoming, in order to a safe keeping or protection from prison; and the end of bail is, to satisfy the condemnation and costs, or render the defendant to prison.

Bail

Bail and *Mainprize* are often used promiscuously in our law books, as signifying one and the same thing; and they agree in this particular, that they save a man from imprisonment in the common gaol; his friend undertaking for him, before certain persons for that purpose authorised, that he shall appear at a certain day, and answer whatever shall be objected to him in a legal way. 2 *How. P. C.* c. 88. 4 *Inst.* 180. The chief difference is, that a man's *mainperners* are barely his sureties, and cannot imprison him themselves to secure his appearance, as his bail may, who are looked upon as his gaolers, to whose custody he is committed, and therefore may take him upon a *Sunday*, confine him till the next day, and then render him. 6 *Mod.* 231. *Lord Raym.* 706. 12 *Mod.* 275.

Bail and mainprize.

The difference between them.

By the common law, when the sheriff arrested any one, he was not obliged to release him, without the writ of *homine replegiands*. 2 *Saun.* 60. *Fitz.* 2. b. 6 *Reg.* 77. 22 *H.* 6. 46. 19 *H.* 6. 43. 21 *Ed.* 4. 77 *Fitz.* N. B. 25. a.

By common law, when sheriff arrested, was not obliged to take surety.

But now by stat. 23 *H.* 6. c. 9. it is enacted, that all sheriffs, and all other officers and ministers, shall let out of prison all manner of persons, by them or any of them arrested, or being in their custody, by force of any writ, bill, or warrant, in an action personal, or by cause of indictment upon reasonable sureties of sufficient persons, having sufficient within the counties where such persons be so let to bail or mainprize, to keep their days in such places as the said writs, bills, or warrants, shall require (a) (such person or persons which shall be in their ward by condemnation, execution, *capias utlogatum*, or excommunication, surety of the peace, and all such persons which be or shall be committed to ward by the special command of any justices; and vagabonds refu-

Sheriffs shall bail prisoners.

Who to be bailed.

Upon what sureties.

When to appear.

What persons not bailable.

(a) The sheriff has no authority to take bond for appearance of persons arrested by him under process issuing upon an indictment at the quarter sessions, for a misdemeanor, but can only take a recognisance for their appearance. *Bennough v. Rossiter*, 4 *Term Rep.* 505.

What bonds may
be taken,

What bonds to
be void.

Before this sta-
tute, sheriffs used
to take bonds,
sometimes by
oppression and
duress, extorted
large sums of
money from pri-
soners.

Statute consists
of 2 parts.

With respect to
the sheriff,

“sing to serve according to the form of the statute
“of labourers only excepted). And that no she-
“riff nor any of his officers or ministers aforesaid,
“shall take or cause to be taken, or make any ob-
“ligation for any cause aforesaid, or by colour of
“their office, *but only to themselves*, of any person,
“nor by any person which shall be in their ward,
“by course of the law, but by the name of their
“office, and upon condition written, “*that the*
“*said prisoner shall appear at the day contained in the*
“*said writ, bill or warrant, and in such places, as the*
“*said writs, &c. shall require.* And if any of the
“said sheriffs, or other officers, or ministers afo-
“said, shall take any obligation in other form, by
“*colour of their offices*, that it shall be void (a).”

Before this statute, sheriffs, &c. for ease and en-
largement of prisoners, and sometimes by oppres-
sion and duress, extorted of prisoners large sums
of money by colour of their offices, by which means
they became very opulent, the prisoner impover-
ished, and the proceedings of justice delayed; for
when a man was in execution, the sheriff would set
him at large, and take bond to save him harmless,
so that the plaintiff's remedy was to sue the sheriff
for an escape, by which he was put to great ex-
pences; and when he recovered, he had only
his taxed costs, and the debt without any interest;
by this contrivance, before the making of the sta-
tute, plaintiffs became tired with the trouble and
charge attending such an action, and rather than
prosecute, they compounded for half their demand.
10 Rep. 102. Plowd. Com. 67. b.

This statute consists of two parts, the one for
the benefit of the sheriff, the other for the party
arrested. Cro. Eliz. 808. Clifton v. Webb.

That which respects the benefit of the sheriff
is, that he shall take *bonds with sureties* for the
indemnifying himself, which if he be amerced,

(a) The sheriff cannot take bail on an attachment for a contempt
out of the K. B. or C. P. 1 Str. 479. But a judge may, at his
chambers,

he

he may sue against the parties bound; or if he be sued for not having the body at the day, he may plead in bar. And it hath been determined that he may take *one surety*, for it is at his own peril, and he is left at his own discretion to take one, two, or ~~more~~ securities as he thinks fit. *Cro. Eliz.* 672. 808. And he may take it of one who has nothing in the county. *Ibid.* 862. 624. 808.

But not bound to take less than two. *Cro. Eliz.* 862.

The act means that the sheriff shall take security on such writs as require *special bail only*, and not on *executions*. *Cro. Eliz.* 647. And therefore that he may take bond to appear on an *attachment for contempt*, out of the court of chancery for non-appearance. *Stiles*, 234.

The act means, that he shall take security only on writs that require special bail.

The security to the sheriff must be in the particular form marked out by the statute, otherwise it is void, and it requires the bond to be given to the *sheriff* as such for the appearance of the party, and for no other purpose, and if given to the bailiff, it is bad. *Rogers v. Reeves*, 1 *Term Rep.* 421.

Security must be given to the sheriff only, and not to the bailiff.

When a person is arrested for debt, either the officer is not obliged to admit him to bail at all, or he is obliged to admit him to bail, as of duty; or he may use his discretion. Now, in any of these cases, it is oppression to take money, for doing what he ought to do; even though it be the mere using his discretion, "whether he should admit him to bail, or not." *Lord Mansfield*, 2 *Burr.* 926. And if the officer take a fee for accepting one as bail for the defendant, he is liable to an attachment. *Denison J.*

Promise of a bribe to a bailiff illegal.

By this act an officer is obliged to admit a man to bail on *mesne process*, if they are sufficient and unexceptionable, when offered him. It is his duty to do it. And it is the principle of the common law, that an officer ought not to take money for doing his duty. 2 *Burr.* 928. *Wilmot J.* If the taking of money for doing his duty, was permitted, it would introduce such a scene of oppression, as would be insufferable. *Ibid.* 927. *Denison J.*

Obliged to admit to bail.

If the bailiff take money for letting persons out on bail, he is punishable by attachment or indictment. 2 Burr. 927. *Stotesbury v. Smith*.

That which respects the benefit of the party.

The clause for the benefit of the party is, that the sheriff under colour of his office, should not oppress the party, to make him any other manner of obligation, than what is there prescribed. Pl. 67. *a.* for when he has accepted the security, he is supposed to be saved harmless.

Three forms observed in bond.

The second branch of the statute requires a security by bond. 1 Term R. 421.

Respecting which there are 3 things to be observed.

1. That it be made to the sheriff himself.
2. That it be made to him, by his name of office.
3. That it be conditioned for the defendant's appearance, at the return of the writ, and for that only. Cro. Eliz. 862.

Bail bond when good.

Therefore if the bond be not made to the sheriff, or it be not made to him by his name of office, or without condition, or with an impossible condition, 1 Str. 399. or the condition be not for the defendant's appearance: Dy. 119. it is void. Where a bail bond was without the words *ubicunque, &c.* although the *capias* was *coram dom. rege ubicunque tunc fuerit in Anglia*, the defendant pleaded the stat. H. 6. that the sheriff could take no bond, but such as was to appear at the place in the writ mentioned; whereas this might be to compel an appearance out of England, if the king should happen so to be. *Sed per cur.* there are no set form of words for these bonds; but if in substance, "they are to appear according to the design of the writ," it is sufficient. 2 Cro. 286. 2 Vent. 237. 2 Show. 51. 2 Lev. 180. On a *quo minus*, the bond was to appear in the office of pleas in the court of exchequer at *Westminster*; and held well enough, though the process was to appear before the barons: we well understand, that before the king, is meant before the king in his court, and not before the king in person.

No set form.

Phillips v. Phillips, in Scacc.

son. Judgment for the plaintiff. *Shuttleworth v. Pilkington*, 2 Str. 1155. If a bond be taken to appear on a day out of term, it is void, the statute need not be pleaded, nor the sheriff amerced. *Mills v. Bond*, 1 Str. 339. 2 Sid. 129. *Ld. Ray.* 353.

The general rule is to take the bond in double the sum sworn to. By stat. 1 W. & M. s. 2. c. 2. f. 10. the sheriff ought not to require excessive bail (a).

To remedy this, the stat. 12 Geo. 1. c. 29. s. 2. enacts, "that the sheriff or other officer to whom the writ or process is directed, shall take bail for no more than the sum indorsed on the back of such writ."

Where the defendant is arrested on *mesne process*, and is in actual custody, it is his duty to take bail; and if a bail bond be tendered with sufficient sureties, and the sheriff refuse to accept it, he is liable to a special action on the case. *Gilb. C. P.* 20. *Gr.* Car. 196. 2 Vent. 92.

A bail bond given to the sheriff of *Durham*, under a writ immediately issued from the king's bench to him, is not void; though the county palatine might have interposed, and claimed his privilege. *Jackson v. Hunter*, 6 Term. Rep. 71.

It is laid down, that this is a particular private law, and must be pleaded. *Saund.* 154. 2 Burr. 928.

"The sheriff or his officer by this act is to take no more for such obligation, warrant, or precept, than 4*d.*" s. 9. "And that all sheriffs, under-sheriffs, clerks, bailiffs, gaolers, coroners, stewards, bailiffs of franchises, or any other officers or ministers, which do contrary, shall lose to the party treble damages, and forfeit 4*0*l., one moiety to the king, and the other moiety to the party that will sue." s. 11.

"The fee for a bail bond, is not as I can learn, settled; but I have heard that the sheriff is in-

(a) This stat. is *decretory* to the sheriff, and does not avoid the bail bond, where there is no affidavit of the cause of action. 1 Burr. 310. Or when the sheriff takes bail for more than the sum sworn to. 1 Wils. 69. 1 H. Black. 76.

"titled to 4 s. 6 d. for a bail bond; and if he attends out of his office, 6 s. 8 d."

Attorney undertaking.

If an attorney undertake to put in special bail to the sheriff, by consent of plaintiff's attorney, the court will enforce it by attachment. 1 *T. Rep.* 422.

Arrest in one county, and takes bond in another.

If the sheriff arrest a man in his own county, and afterwards carries him into another county, and there detains him, until he hath given him a bond for appearance, this bond, it is said, is out of the statute. *Cro. Jac.* 745. *Dalt.* 525.

If an undertaking be taken instead of a bail bond.

If a sheriff's officer upon an arrest take an undertaking for the appearance of the defendant instead of a bail bond, *without the plaintiff's assent*, and bail above is not duly put in, the sheriff is liable to an action for an *escape*, and the court will not relieve the sheriff by permitting him to put in and justify bail afterwards. *Fuller and others v. Prest*, 7 *Term Rep.* 109. *Lord Kenyon*—If the plaintiffs had accepted the undertaking, all would have been well. But this is a novel experiment; and if it were successful, it would open a door to gross imposition. *Asheburst J.*—Neither the sheriff or his officers ought to shew favour to any person arrested by them; they should on all occasions discharge their duty, and their forbearance is in general not an act of humanity, but of avarice. *Lawrence J.*—This practice would be injurious to the plaintiff, and oppressive on the defendant. The former would be deprived of the remedies which the law has given him, and the latter would be subject to the extortion of the sheriff's officers.

What is sufficient to state in a bail bond.

It is sufficient to state in the condition the names of the parties, and the time and place of defendant's appearance; if the cause of action be added, it may be rejected as surplusage. *Owen v. Nail*, 6 *Term Rep.* 702. Therefore where under an original writ in a plea of trespass on the case on promises, the sheriff took a bail bond conditioned for the defendant's appearance, in a plea of trespass, it was held good. *Ibid.* (a)

(a) If a bond stated to have been taken 4 Nov. conditioned for appearance on the morrow of all souls, 3d Nov. it is void by the statute. 2 *Term Rep.* 569.

It

It is clear that the sheriff must take the bond, *by the name of his office*, Cr. Eliz. 862.; and the court held in error, that it sufficiently appeared so on the whole declaration being laid, "*solvend. eidem vice comiti & assignatis.*" Str. 893.

Must take bond in the name of office.

It has been held that neither the place where the bail was taken, nor the sheriff's intention to deceive the plaintiff of his debt, by taking insufficient bail, as alledged, is not *traversable*. Sid. 96. pl. 24. therefore the bond may be taken out of the county. Str. 444. 643. For if the arrest was *traversable*, it would be a way to avoid all bail bonds civilly taken, without exposing the party to an arrest.

Neither the place where bail bond taken, or insufficiency of bail *traversable*.

A bond made to the marshal, conditioned that if A. P. a prisoner in B. R. continues a prisoner, and in the safe custody of the plaintiff, or of his deputy, until he should be discharged lawfully, held good. 1 Saund. 161. *Lenthall v. Cook*. For the prisoners of the K. B. being so numerous, that the house cannot hold them, but are permitted to lodge within the rules, and consequently there is a good reason, to take security for their true imprisonment. Lev. 254.

A bond made to the marshal to continue prisoner, good.

If a *capias* be taken out against the defendant and a third person gives the plaintiff a bond, that the defendant shall pay the money or render himself at the return of the writ, it is good, because it was by the direction of the officer. 2 Mod. 305.

If *capias* against defendant, third person gives bond to pay, good.

On a joint bill of *Middlesex* against three, with an *ac ætiam super scriptum obligatorium* by them jointly and severally, the sheriff took one bail bond for the appearance of them three, and there being no appearance; the plaintiff took the bond, and now would have had the sheriff amerced. It was agreed, that the bail bond was not according to the statute, being for a joint appearance to several actions. 6 Mod. 122.

Bill of *Middlesex* against three with *ac ætiam*, jointly and severally, the sheriff takes bond for appearance of the three, bail bond not according to statute being for a joint appearance.

If the sheriff takes an obligation for the appearance of J. P. before process comes to him, to arrest J. S. and after the process comes, this obligation is good. Sid. 157. *Keb. 554*.

Bond for appearance before process comes.

Bill

Mistake of the day.

Bill of *Middlesex* was returnable on *Friday*, the condition of the bail bond was, if the defendant appeared on *Saturday*; it is a void bond. *Saund.* 21, 22. (a)

Where sheriff may take bail on process that does not express the cause of action.

If a sheriff arrests defendant on an attachment for want of appearance or answer in chancery or the exchequer, or in the exchequer of pleas for want of appearance, he may take a bail bond in 40 l. for the appearance of such defendant, stat. 13 Car. 2 ft. 2. c. 2. but not for costs. And that upon appearance on the return of such writ by attorney, bond to be discharged; and the sheriff not to be amerced. *Ibid.*

Of the Discharge of Defendant.

Sheriff to make search before he discharge.

When the defendant is bailed, it is necessary for the officer to search the office for his own security, if any detainers be against him; and a reasonable time is allowed for that purpose.

And to have a reasonable time to search the office for writs.

But if a discharge comes from the plaintiff or his attorney, and a writ be found on such search against a person of the same name, the sheriff is to have time to make proper enquiry. And *Lord Kenyon* said, when a person is arrested where no bail is given, the officer is not bound to search the office until a written discharge comes from the plaintiff. When therefore it becomes necessary for the officer to make such search, a reasonable time must be allowed him for that purpose, and 24 hours does not seem to be an unreasonable time, particularly when a writ was found apparently against the same defendant. *Taylor v. Brander, Esp. N. P. M. 34 Geo. 3. 45.*

Of the Assignment of the Bond.

Plaintiff may take an assignment of the bond.

The next thing is, if the defendant does not appear according to the condition of the sheriff's bond, the plaintiff may take an assignment thereof, if he thinks proper, pursuant to the statute 4 Ann. c. 16.

(a) The sheriff having taken a bail bond for appearance at the return of the writ, he is not liable to an action for an escape. 3 *Salk.* 314.

It seems that previous to this statute, it was no new thing for the sheriff to assign his bond to the plaintiff; but then such assignment was not good, being a chose in action, yet the plaintiff might sue in the sheriff's name, and recover, provided the sheriff did not release to the defendant, to prevent which by said stat. 4 *Ann. c. 16. s. 20.* it is enacted, "If any person shall be arrested by process out of the courts at *Westminster*, at the suit of a common person, and the sheriff or officer taketh bail, the sheriff, or other officer, at the request and costs of the plaintiff, or his attorney, shall assign the bail bond, to the plaintiff in such action, by indorsing the same, and attesting it under his hand and seal in the presence of two witnesses, without any stamp, provided the assignment be duly stamped before any action be brought thereon (a)."

Assignment no new thing.
1 *Mod. 221.*

Sheriff at request of plaintiff or his attorney shall assign the bail bond.

On a case at the assizes, the question was, whether a bail bond was well assigned by the under-sheriff's clerk? *Parker, C. J.* said, he had the advice of all his brothers, and they were of opinion, that an under-sheriff himself might assign a bail bond, in the name of the high-sheriff, it having been the constant practice ever since the statute, 4 *Ann.* but that if the assignment was neither by the high-sheriff, nor his under-sheriff, it would not be good, and that being the present case, the defendant had judgment. 1 *Str.* 60. 10 *Mod.* 288. *Kidson v. Fagg.*

Under-sheriff's clerk cannot assign bail bond.

Sheriff or under-sheriff may assign the bail bond out of his county. 2 *Str.* 727. *Lord Ray.* 1455. *Fort.* 566.

May assign out of the county.

The sheriff (although he be out of office) may assign the bail bond given to him; in this case he does it as late sheriff. *Fortesc. Rep.* 364.

Late sheriff may assign.

If the bond be cancelled on defendant's return into custody before the return of the writ, no

If bond be cancelled before return.

(a) It hath been held the bond may be assigned before forfeited, tho' it cannot be put in suit till afterwards. *Barn.* 77

action can be maintained against the sheriff for not assigning such bond. *Stamper v. Milbourn*, 7 Term Rep. 122. 6 Term Rep. 753. *Jones v. Lander*, S. P. This stat. only meant that the sheriff should be compelled to assign such bail bonds as were effectual.

Of Bail on Capias utlagatum.

At common law, the defendant could not have been bailed on a *capias utlagatum*, 3 Burr. 1484. 4 Burr. 2540. ; and this case is particularly excepted out of the statutes 23 H. 6. c. 9. 13 Car. 2. stat. 2. c. 2. f. 4. by the latter, it is expressly declared, that no sheriff, &c. shall discharge any person taken on a *capias utlagatum* out of custody, without a lawful *superfedeas* first received. But now, "If any person be outlawed and arrested upon a *capias utlagatum*, in the king's bench, (other than for treason or felony,) it shall be lawful for the sheriff (in all cases where special bail is not required) to take an attorney's engagement under his hand to appear for the said defendant, to reverse the said outlawries, and thereupon to discharge the said defendant from such arrest." 4 & 5 W. & M. c. 18. f. 4.

If any person be arrested on a *capias utlagatum* in K. B. sheriff if no bail required, may take an attorney's hand to appear.

If it requires bail, sheriff may take bond with one or more surety for appearance by attorney, and do, and perform, &c.

Persons taken as before, shall be discharged, giving security after return of the writ.

"And in those cases where *special bail* is required by the said court, the said sheriff shall and may take security of the defendant, by bond, with one or more surety, in double the sum, for which bail is required, and no more, for his, her, or their appearance by attorney in the said court, and do and perform such things, as shall be required by the said court;" and after such bond taken, to discharge the defendant from such arrest." f. 4.

"If any person outlawed and arrested on a *capias utlagatum*, shall not be able within the return of such writ, to give security as aforesaid, (in cases where *special bail* is required,) so as he or they are committed to gaol for default thereof; that

" that whensoever the said prisoner or prisoners
 " shall find sufficient security for his or their ap-
 " pearance to the sheriff by attorney, at some return
 " of the term then next following, to reverse the said
 " outlawry, and to do and perform such other thing
 " and things, as shall be required by the said court ;
 " such sheriff shall discharge the defendant out of
 " prison." *Stat. 5.* This stat. has been construed
 not to extend to criminal cases; at least not to
 misdemeanors after conviction, 4 *Burr.* 2539,
Rex v. Wilkes; nor is he bailable, when taken
 upon outlawry, after judgment. *Ib.* 2540.

Crompt. Cases in Pract. 26. says, All persons on a
cap. utl. in C. P. have been bailable since making of
 this statute, and before might have been discharged
 by *superfedeas*. See *Sell. Prac.* 398. S. P. (a)

If the sheriff arrests on an attachment for con-
 tempt in any of the superior courts of law, the
 sheriff cannot take bail, but the party must put in
 bail before a judge to answer such contempt. 2 *Salk.*
 608. *Stile*, 234. *Abrid. Cas.* 29. 355.

In the common
 pleas, whether
 a sheriff can take
 bail on a *capias*
utlagatum, or
 not.

The sheriff can-
 not bail on an
 attachment for
 contempt.

Of ruling the Sheriff to return the Writ, and bring in the Body.

IT appears by 13 *Ed. 1. c.* 39 & 23 *H. 6.*
c. 10. that sheriffs were tardy in returning their
 writs in due time; and by the former statute, it is
 ordained, that a complaint should be made to the jus-
 tices, and a writ should go unto them, to enquire,
 whether such writ was executed or not; and if exe-
 cuted, and not returned, the demandant should have
 the damages awarded.

Sheriffs tardy in
 returning pro-
 cess.

By the latter, if sheriffs return upon any person,
expi corpus, or *reddidit se*, they shall have the bo-
 dies at the return of the writ.

If returned *expi*
corpus, to have
 body.

By rule E. 6. *Fac. 1.* every sheriff shall, before or
 immediately after the end of every term, return into

To return writs
 into court before
 or after end of
 term.

(a) It seems the practice has been so upon enquiry of Mr. Marshall
 at the sheriff of Middlesex's office. I find no case on the point.

court

court all writs, directed and delivered, and in default expect judgment for contempt.

Notwithstanding which they delayed.

K. B. & C. P.

Notwithstanding which, sheriffs, bailiffs of liberties, and their deputies, delayed execution of process, and return thereof; for preventing of which, a rule was made, *Mich. T. 1654. Sect. 2.* whereby the court ordered, *if it should appear that any such officer should wilfully delay the execution or return of process or execution, or having levied money, should detain it after the return, besides the ordinary course of amercement, &c. an attachment, &c. should be as the case requires.*

If the plaintiff accept the bail bond, he cannot have a rule to return the writ. *1 Wilf. 223. Salk. 99. 3 Salk. 57.* provided the bond is valid, *1 Wilf. 223. Ld. Brooke v. Stone.*

Within what Time to return the Writ.

In London and Middlesex to return in 4 days.

In London and Middlesex the sheriff must return the writ *within four days next after service* of the rule upon him or his under-sheriff, or an attachment shall issue against such sheriff, without giving a day to shew cause against such attachment. *Rule, T. 6 Geo. 3. K. B. R. H. 7 Geo. 3. C. P.*

In any other county 6 days.

And in any other county, city or town, the sheriff is to return his writ *within six days* next after service of such rule on him, or his under-sheriff, or an attachment shall issue. *R. T. 5 & 6 Geo. 2. B. R. Rule, Hil. 8 Geo. 1. C. P. R. H. 32 Geo. 3. Exch.*

Where may be served in town.

The rules on the sheriffs of London or Middlesex may be served at the usual office; and so on the agent of Surrey.

Where in any other county.

But with respect to the sheriffs of other counties, &c. the rule must be served on the respective under-sheriff. *The King v. Coles, Dougl. 420.* The rule must not be served on the agent of the under-sheriff of London, Middlesex, or Surry, but *at the office only; ibid.* because the offices of the agents for these under-sheriffs are, in truth, considered

dered as the offices of the under-sheriffs themselves.

Dougl. 420.

And by rule *M. 32 Geo. 3. B. R.* it is ordered, that all writs shall be returned *on the day* on which the rule for returning the same shall expire; and in default thereof, the plaintiff shall be at liberty to move for an attachment on the *next day*. This rule arose out of the case of *Rex v. Sheriff of Surry*, where the sheriff had not returned the writ till the morning of the *seventh day*, although before the sitting of the court. *4 Term Rep. 496.*

Rule to return writ, to be returned on the day on which rule expires.

Where a *special bailiff* has been nominated by the plaintiff, or his attorney, the sheriff is not bound to return the writ; and should the usual rule be made, the court, on motion, will discharge it. *Hamilton v. Dalziel, 2 Black. Rep. 952.*

If special bailiff, need not return writ.

And in order to ascertain the true time of making the return of such writ, the *custos brevium* of the court of king's bench is required to indorse on every writ, *on what day, and at what hour*, the same was filed. *Rule T. 30 Geo. 3. B. R.*

Custos brevium to indorse the day and hour same filed.

If there be *no return*, it is a contempt, for which the court, on an affidavit of service of the rule, will grant an attachment.

If writ be not returned.

A rule to return the writ must be sued out in term, if not it will be irregular. *Rex v. Sheriff of Cornwall, 1 Term Rep. 552. K. B.*

Must be taken out in term.

Within what Time to bring in the Body.

By the like rules, where the sheriff has returned *cepi corpus* on the writ, if it be in *London or Middlesex*, he must bring in the body within four days after service of the rule for that purpose, or an attachment shall issue. If it be in any *other city or county*, then within six days after service of such rule.

If sheriff has returned cepi corpus.

This rule is to be served in like manner as the rule to return the writ. The intent of this rule, where the defendant is not in custody, is to compel the sheriff to put in and perfect bail above.

The intention of the rule.

Rule to bring in body cannot be taken out till the day after the expiration of the rule to return the writ, except where bail is not put in in due time. Vide *Parker v. Wall*, ante.

This rule cannot be taken out till the day after the expiration of the rule to return the writ, if bail be put in in due time, *Hutchins v. Hird*, 5 *Term Rep.* 479. *Spicer v. Linnell*, C. P. E. 23 *Geo.* 3. *S. P. Rolfe v. Steele*, 2 *H. Black. Rep.* 276. for it is necessary that the proceedings against the sheriff should keep pace with the time allowed the defendant for putting in and perfecting bail, otherwise this inconvenience might ensue, that the sheriff might be fixed with the payment of the debt and costs; and upon his bringing an action against the defendant, or his bail on the bond, they might plead *comperuit ad diem*.

It is no excuse for sheriff to say he took a bail bond, he must have the body ready.

Upon the rule to bring in the body, is no excuse that the sheriff had taken a bail bond, and had permitted the defendant to go at large. For it is at the peril of the sheriff he takes bail on the *stat. H. 6.* and the party is not concluded thereby; the sheriff must either bring in the body, or justify good bail in court, *Lee C. J. Wolfe v. Collingwood*, 1 *Wils.* 262. or render pursuant to the new rule.

Sheriff may, on receiving this rule, put in bail and justify and render.

The sheriff, when ruled to bring in the body, may put in bail for the defendant without his consent, and justify the same to prevent an attachment: and the bail may afterwards render the defendant. *Rex v. Butcher & al. Peake's Cas.* 169.

To prevent rule to bring in body, sheriff should return him in actual custody.

The sheriff, if defendant is in custody, should return him in actual custody, which prevents the rule on him to bring in the body, *Macleod v. Marsdon, Barnes* 32. otherwise he must move to discharge that rule on an affidavit of the fact.

Bail may render the principal before the return of a rule against the sheriff to bring in the body, before they have justified giving notice of such render.

Whereas by the present practice of this court, the bail put in for the defendant in any action cannot render such defendant after a rule has been granted against the sheriff to bring in the body, before such bail have justified themselves in open court: *It is ordered*, that from and after the last day of this term, bail shall and may be at liberty to render the defendant, notwithstanding such rule, at any time before the expiration thereof; the attorney for the defendant giving notice of such render

tender to the plaintiff's attorney without delay, and making affidavit thereof. *R. T. 33 Geo. 3. B. R.*

In consequence of this rule, a motion was made on the construction of it, whether the sheriff could put in bail, in order to comply with the rule to bring in the body without justifying. The court held, the sheriff is not obliged to justify his bail, and that the above rule extends to the case of the sheriff. *Rex v. Sheriff of Middlesex,*

7 Term Rep. 527. (a) And the common pleas held, that though the rule to bring in the body has expired, yet if the defendant justifies bail *before* the plaintiff *move* for an attachment against the sheriff, it is in time to prevent the attachment. *Thorold v. Fisher, 1 H. Bl. Rep. 9.*

But the king's bench have held, that if the sheriff be *once* in contempt for not bringing in the body, that contempt is not purged by the defendant's surrendering on a subsequent day, though *before* an attachment is moved for against the sheriff. *Rex v. Sheriff of Middlesex, 8 Term Rep. 29.*

In *Rex v. Sheriff of Essex, H. 36 Geo. 3. B. R.* the court said the contempt is not incurred by the sheriff until the day on which the rule to bring in the body is passed, for the sheriff has the *whole* of *that day* to render.

If the sheriff's officer take an undertaking to put in bail instead of a bond, without the assent of the plaintiff, and bail above is not put in in due time, the plaintiff may sue the sheriff for an escape, and after such suit commenced, the court will not permit the sheriff to justify bail, although he offer to pay costs of the action brought against him. *Fuller and others v. Prest, 7 Term Rep. 109.*

So where the bail had been rejected, where *no bail bond taken*, and the plaintiff brought his action for an escape, new bail was offered to justify by

(a) The common pleas have also held, that though a rule to bring in the body has been served, bail may be put in, and render without justifying. *Hall v. Walker, 1 H. Black. Rep. 638.*

This rule extends to the case of the sheriff.

May justify in C. P. before attachment moved for.

But in K. B. it is otherwise.

Contempt not incurred by sheriff till the last day to bring in body.

If sheriff's officer take undertaking, and bail above is not put in in due time, and action against sheriff, he cannot justify his bail.

C. P. will not permit defendant to justify new bail after

an action for
for escape
brought for ne-
glecting to take
a bail bond.

If bail be not
put in in time,
the rule to bring
in the body may
be served the
day writ was
returned.

The motion for
attachment to
go on the crown
side.

The affidavit to
ground motion
for attachment.

May be moved
last day of term.

If rule for al-
lowance of bail
be not served.

If an attorney be
bail, he is con-
sidered as no bail.

defendant, the *common pleas* held, that as the sheriff had neglected to do his duty, he ought not to be relieved, for the court could not too strongly mark his conduct in omitting to follow the directions of the statute, and rejected the bail. *Webb v. Matshew*, *Bos. & Pull. Rep. C. P.* 225.

The writ was returnable the 1st June, Sheriff ruled to return it the 2^d, and on the 8th he returned *cepi corpus*, on which the plaintiff's attorney, *same day*, served him with a rule to bring in the body, and on the 15th obtained an attachment, court of *K. B.* held the proceedings regular; although it was objected the sheriff had all the *eighth* to return the writ, and consequently, that the rule to bring in the body should not have been served till the *ninth*: for in this case the *time* for putting in bail *had expired, before* the service of the rule to bring in the body. *Parker v. Wall*, *M.* 26 *Geo. 3. Tid. Pract.* 166.

A motion for an attachment against the sheriff in *K. B.* ought to go on the crown side of the court, and if moved to be set aside, the affidavits are to be intitled, *The King against the Sheriff of* —. *3 Term Rep. K. B.* 133. 253. *7 Term Rep.* 439.

The motion must be grounded on an affidavit stating, that the rule was served *personally* on the under-sheriff, and the *original rule* shewn him at the same time. *The King v. Smithies*, *3 Term Rep.* 351. *So also in C. P.*

And an attachment may be moved for not bringing into court the body, on the *last day of the term*, at the rising of the court. *1 Burr.* 651. *So in C. P.*

If the rule for the allowance of the bail be *not* served, an attachment may be moved for against the sheriff. *Rex v. Sheriff of Middlesex*, *4 Term Rep.* 493.

If one of the bail put in be an attorney, there *need no exception*, but the plaintiff may go on with his rules, the court considering such a bail *as no bail*,

bail, and on that account, an attachment for not bringing in the body was refused to be set aside. *Ritchie v. Gilbert, E. T. 33 Geo. 3. C. P. Impey, C. P. 214.*

If a verbal exception be given to bail, although properly entered in the filazer's book, the sheriff may take advantage of it, and set aside the attachment for not bringing in the body: for where there are two parties, and one of them takes a step previous to which the other ought to have taken a step, the former waives the obligation which the latter was under, as between themselves, but not as relating to a third person: here the waiver by the defendant, if it were one, was not a waiver by the sheriff. The rule ought to be strictly followed, to prevent confusion. *Coburn v. Davis, 1 H. Black Rep. 80 C. P.*

The sheriff is not liable if proceedings are not strictly regular, a verbal exception to bail, instead of a written one.

The rule to bring in the body is one day exclusive, and the other inclusive, therefore an attachment cannot be moved for until the morning of the fifth day. If the rule be served on the Wednesday, an attachment cannot be moved for until the Tuesday morning following. *North v. Evans, 2 H. Black. Rep. 36.* Sunday being the last day is considered as no day.

The 4 days are reckoned one inclusive, the other exclusive, if Sunday intervenes.

Although an attachment is irregular, if the rule to bring in the body issues before the time for perfecting bail, the sheriff cannot move in the next term to set it aside for irregularity: *Rosse v. Steele, 2 H. Black. Rep. 276.* he must take advantage of it as early as possible.

Sheriff must move to set aside an irregular attachment long term granted.

Of proceeding against the late Sheriff.

The late sheriff is now liable to be called on to return his writ, and bring in the body, in the same manner as the present sheriff, by rules of court; and he is bound to make his return at any time within six months after the expiration of his office. But he is not liable on request only, he

Late sheriff liable to be called on to return the writ within six months after he is out of office, by rule of court, and also by rule to bring in the body.

must be served with a rule for that purpose (a), *Rex v. James*, 2 Term Rep. 1. within the time. *Vide stat.* 20 Geo. 2. c. 37. s. 2. The months are lunar months, and the day of the sheriff quitting his office is reckoned as one. *Dougl.* 463.

If the plaintiff delay his proceeding against the sheriff, and the bail become insolvent in the meantime, court will discharge a rule to bring in the body.

A *latitat* was sued out 29 Nov. 1796, directed to the late sheriff of Surry, returnable 23 Jan. 1797, on which the defendant was arrested and a bail bond given. The 24 Jan. he was served with a rule to return the writ;—he returned *cepi corpus*;—after that time, no proceedings were had until Mich. 1797, when the above sheriff was ruled to bring in the body, and a rule for an attachment granted, which was issued. Motion in this term to set it aside, the affidavit stating, both the bail were become insolvent, and defendant absconded. The court said, that though there was no decided case on this subject, it was highly unreasonable that the sheriff should be called upon at this distance of time, when the bail and defendant had both become insolvent, and made the rule absolute. *Rex v. Sheriff of Surry*, 7 Term Rep. 452. B. R. M. 38 Geo. 3.

Sheriff, although he goes out of office, must bring in the body, if ruled.

Although the sheriff go out of office after he has been served with a rule to bring in the body, and a new sheriff appointed, if he does not justify bail *in due time*, he is liable to an attachment, *Meekings v. Smith*, 1 H. Black. Rep. 629. (b)

As to staying Proceedings against the Sheriff after Attachment.

If attachment was once granted, formerly could not set it aside.

Formerly it was the practice that when once the attachment was granted, the bail could not justify, *Left.* 438. nor could the attachment be set aside; but the utmost the defendant could do, was to apply to the court, on an affidavit of merits, to be let in to try on terms, first justifying bail; and

(a) Formerly was obliged to proceed by *disfringas*.

(b) He may now render.

consenting

consenting that the attachment should remain in the office as a security.

But the practice is now otherwise; for if the plaintiff has *not* lost a trial, the court will, "on an affidavit of the merits," set aside the attachment, upon perfecting bail, and paying costs, 4 Term Rep. 352. *Hill v. Bolt*, K. B.

But if a trial be lost, the court will further require, that the attachment shall remain in the office, and stand as a security for the sum recovered *Gravett v. Williams* 4 Term Rep. 352. in notes, K. B.

Where the application is made by the sheriff, it cannot be expected that he should make an affidavit of merits; but the court will require an affidavit to be made on his part, "that the application originated from him, and not made in collusion with the defendant;" if that be done the plaintiff will have no reason to complain, as he will be put in the same situation that he was originally entitled to be in. *Rex. v. the Sheriff of Surry* 7 Term Rep. 239. K. B.

But if it appear, that the sheriff has taken an undertaking, instead of a bail bond, the court will not consent, because the sheriff has been guilty of a breach of his duty. *Ibid.* & vide 7 Term Rep. 109. *Fuller v. Prest.*

The same practice is now established in the C. P. 2 H. Black. Rep. 235. *Callan v. Tye*; and the court said, if the plaintiff had taken an assignment of the bond, instead of resorting to the sheriff, as the proceedings would have been stayed by perfecting bail and paying the costs, it was reasonable that the same indulgence should be allowed to the sheriff, and that the practice should be uniform. When the sheriff is fixed for not bringing into court the body, and wishes to go no further, by trying the merits; the courts will only relieve him by payment of the whole debt and costs. *Heppell v. King*, 7 Term Rep. 370. *Fowlds v. Mackintosh*, 1 H. Black. Rep. 233.

K 4

N. B.

But now it may, if no trial lost without the attachment laying in the office as a security.

But if a trial be lost, it must stand as security.

If application be made by the sheriff, what affidavit will be requisite to be made.

But if the sheriff has taken an undertaking instead of a bail bond, court will not consent.

When sheriff fixed for not bringing into court the body, and wishes not to try, he cannot be relieved but by payment of debt and costs.

N. B. This is hard on the sheriff in case the debt exceed the penalty of the bail bond, because the bail are *not* liable for *more* than the penalty in the bond. *Dougl. in notes, 330. Sheddon v. Carney, K. B.*

Clerk to attorney not articulated cannot justify.

A clerk to an attorney, though not articulated, cannot justify. *Cornish v. Ross, 2 H. Black. Rep. 350.* Buller J. observed, that in the king's bench, the rule comprehended clerks who were *not articulated*, as well as those who were (a).

Preceding and succeeding Sheriff; Acts necessary to be done by each.

IN strictness the sheriff ought to return his writ executed, and previous to his going out of office, and file the same with the *custos brevium*. *R. E. 6 Jac. 1. K. B.*

New sheriff not chargeable before delivery.

For what prisoners the new sheriff shall be chargeable.

The new sheriff is not chargeable with such things which are executed before that they are delivered over to him by the old sheriff. *Cro. Eliz. 365.* For, if the old sheriff takes a man in execution, and afterwards a new sheriff is made, and before the old sheriff delivers his prisoner to the new sheriff, the prisoner escapes; here the old sheriff only is chargeable for this escape, and not the new

(a) There are instances of attachments being granted against sheriffs for total disobedience to the king's writs as in 43 *Ed. 3. 26. pl. 5.* and other books. Yet where there was a return of *cepi corpus*, and the sheriff did not produce the defendant, the mode of compelling him so to do, was by way of amercement. *Roll. Abr. 93. Cro. Eliz. 24. 2 Saund. 60. Dalton, c. 37. Lilly's Pract. Reg. 83. Stat. 13 Car. 2. stat. 2. c. 2. f. 3.* And it appears to be continued from the earliest times to the beginning of the reign of *Geo. 2.* In *Boken's Inst. Legal. 3d ed. 1724*, an amercement is pointed out there as the method to compel the sheriff to return the writ, and also to bring in the body, after being rules. In 1727, in the *old Inst. Cler. B. R. 7 Ed. 57.* an attachment is mentioned as being a more speedy way of proceeding; and in 1729, 1 *Barnardist. Rep.* it is stated, p. 246. on motion for an attachment for not bringing into court the body after several rules, that amercements only used to be the method of enforcing these rules, but lately the courts had granted attachments. *Vide 2 H. Black. Rep. 434. in notes.*

Sheriff,

sheriff, for the new sheriff shall not be chargeable for any other prisoners than what are delivered over to him by indenture. *Hob.* 266. 1 *Bulstr.* 70. 79. 2 *Leon.* 54.

If the old sheriff after he is discharged, shall make his warrant or precept to any of his late bailiff, or officers to arrest another, and the officer by force thereof shall arrest the party, an action will lie against both the sheriff and officer. *Dalt.* 18. *Comp. of Courts,* 205.

The old sheriff returned the proclamation upon an *exigent*, after that, he was discharged of his office; and by the judgment of the court, the outlawry was held void, and the party discharged. *Dyer* 41.

If a writ directed to the sheriff is executed, and afterwards a new sheriff is elected, the successor (if the writ be returned over to him) ought to return the writ with the old sheriff's return thereon that he received the writ as above, indorsed from his predecessor. 2 *Roll Abr.* 457. *Dalt.* 516. *Bulstr.* 70.

N. B. Now the rule is for the late sheriff to make his return.

If the return of the old sheriff happen to be erroneous, and that a new sheriff be chosen, the court may cause the old sheriff to amend the same. *Dalt.* 19. *cites* 33 *H.* 6. 40.

A sheriff upon a *fieri facias*, seized goods in his hands to the value of the debt, and paid part of the debt; and the goods not being sold nor the writ returned, the sheriff was discharged, and afterwards sold the residue of the goods without any *venditioni exponas*; and by the court, the sale is good; for the writ of *fieri facias* gave authority to him to sell without any other writ. *Roll. Abr.* 893. *Salk.* 323.

Sheriff sold goods upon a *fi. fa.* and upon a *vend. exponas*, he returned, that he could not find buyers, then his office determined, and he still detained the goods in his hands; the plaintiff may have a *distringas* directed to the new sheriff to distrain the old

Old sheriff after he is discharged, shall make warrant, and officer arrests.

Old sheriff returned proclamation, after that discharged, outlawry void.

If writ be executed in old sheriff's time, how return to be.

Old sheriff to amend his own return.

Sheriff on *fi. fa.* seized goods to the value of the debt, and paid part, and goods not sold nor writ returned, sheriff discharged, he may sell without *venditioni exponas*.

Sheriff sold goods on *fi. fa.* and on *vend. exponas* returned, want of buyers, then his office determined and he detained,

one

the goods, no other remedy but distringas.

If money be paid to the old sheriff, and he is discharged before return of writ, &c. not to pay again.

When sheriff shall extend goods, &c. for debt due to the crown, and dies before vend. ex-pon, &c. and writ awarded to new sheriff, who shall make sale, barons to settle the fees.

Warrant to bailiff of a franchise this served, and before return, bailiff removed, and new one elected, return to be made by the new sheriff.

one to sell, and deliver the money to the new sheriff to bring it into court; 6 *Mod.* 299. which is the most usual writ.

If money be paid to the old sheriff, and he is discharged before the return of the writ, the party shall not be compelled to pay it again; but the plaintiff may have his remedy against the antient sheriff. *Cro. Eliz.* 208, 209. *pl.* 4. *Sav.* 123. *Ander.* 247. *pl.* 260.

By 3 *Geo.* 3. *c.* 15. *f.* 9. "When a sheriff shall by process out of the exchequer, extend any goods, &c. into the hands of his majesty, for any debt due to the crown, and shall die or be superseded before a *vend. exponas* be awarded for sale, or before he has made actual sale thereof, and a writ shall be afterwards awarded to a subsequent sheriff, who shall make sale of such goods; the barons of the exchequer, &c. shall settle the fees, &c."

It is said if on a warrant directed to the bailiff of a franchise to execute a writ which is served, and afterwards, and before the return thereof, the bailiff is removed, and a new one elected; the return to the sheriff shall not be in the name of the elder bailiff, but of the new bailiff, for the elder bailiff is now a mere stranger. *Roll. Abr.* 457. *Cro. Eliz.* 512.

I think otherwise, the old bailiff should make his return first, and the new bailiff that he had received it as indorsed: or if the old bailiff returns the writ, he should make the return only, if it be not delivered over to the new bailiff.

N. B. The practice I believe now is (unless the defendant be in actual custody) that the old sheriff keeps by him all executed process, and bail bonds taken thereon (except *London* and *Middlesex*); or the rule on him to return the writ, or bring in the body, would be nugatory. If it be not so, the party must proceed by *distringas* to compel, &c.

But if not executed before the old sheriff be re-

But if a writ directed to the sheriff, is not executed by him, and nothing done in the execution there-

of

of, before the sheriff is removed and another elected, and after the writ is executed, it shall be returned generally in the name of that sheriff who executed it, without making any mention of his predecessor. *Roll. Abr.* 453.

The same law is likewise in the case of a bailiff of a franchise. *Ibid.*

If a sheriff levies goods, and dies before satisfying the plaintiff, an action of debt well lies against his executors. *Cro. Car.* 539, 540. But where the sheriff is chargeable in his life time for a personal tort, or misfeasance, there his person is only chargeable, and *actio moritur cum persona*. *Ibid.*

A *fi. fa.* was delivered to the under-sheriff, who executed it the same day that the writ of discharge came to the high-sheriff; but, because it could not be proved, that the under-sheriff had notice of the writ of discharge before the execution executed; it was held by the court, that the execution was well executed, and that the old sheriff was chargeable for it. *Cro. Eliz.* 440. *Baucher v. Wiseman.*

The return of the one sheriff shall not conclude the other. *Br. Ret. Writs*, pl. 5. 3 *H. 6.* 56.

A writ of discharge was delivered to the sheriff, his under-sheriff not knowing it, makes execution in the county, and adjudged no execution, and yet sheriff no trespasser. *Dyer* 315. *Mar.* pl. 36. *cites E.* 44 *Eliz.* C. B.

Walmesly cited in that case a judgment, that execution by bailiff after *superfedeas* delivered to the sheriff, is void. *Ibid.*

Where the old sheriff arrests a man, and afterwards returns a *languidus in prisona*, and afterwards in *exitu ab officio*, delivers him to the new sheriff charged with the arrest, and then the new sheriff suffers him to escape; here the new sheriff is only chargeable with the escape, and although the old sheriff returned a *languidus in prisona*, yet that is not material to the plaintiff, he remaining always in prison, and that return was only to excuse the bringing

moved, afterwards sheriff executes it, to be returned by the sheriff who executed it.

Same law as to a bailiff.

If sheriff levies, and dies, liable to an action.

A *fi. fa.* executed same day writ of discharge came to the sheriff, held that the old sheriff was chargeable.

The return of one sheriff, not to conclude the other.

Where new sheriff chargeable on arrest by the old sheriff.

bringing of the prisoner at the day. *Cro. Jac.* 380. *Dalt.* 516.

Late sheriff may now be called on to return writ by rule of court,

The act 20 *Geo. 2. c. 37.* requiring all *unexecuted* process to be turned over to the new sheriff, of course those that remain *executed* in the hands of the old sheriff must be *returned by him*; he therefore now may be called on by rule of court to return the same, provided it be within six months after the expiration of his office, the day in which he goes out of office is to be reckoned one. *Dougl.* 463.

and also to bring in the body.

And by rules of the courts of king's bench and common pleas, if he return *cepi corpus*, he may now be called on to bring in the body without the process of *distingas*.

In case the old sheriff leave with the new one a writ *returned, executed by him*, then it is usual for the new sheriff to make his return underneath, thus: *This writ as above indorsed, was delivered to me by the above-named late sheriff at the time of his going out of office. The answer of C. D. Esq. Sheriff.* *Dalt.* 516. 2 *Roll.* 457. *Bulstr.* 70.

In all cases (except, &c) there is remedy against the old sheriff is by *distingas*.

In all cases (except on process or execution against the body) where the sheriff who executes the writ is out of office, after return of his writ, a writ of *distingas* is to be directed to the new sheriff, to distrain the old sheriff, and the new sheriff shall make return of such *distingas*.

Of his raising the Posse Comitatus.

By common law the sheriff may raise posse comitatus.

BY the common law the sheriff may raise the *posse comitatus*, or power of the county, that is, such a number of men as are necessary (after resistance) for his assistance in the execution of the king's writs. 3 *Inst.* 161. And every man is bound by the common law to assist not only the sheriff, but also his bailiff, that hath the sheriff's warrant in that behalf, who has the same authority which his master has, for the sheriff cannot do all himself; and if they refuse, being required, they shall be fined and imprisoned. 2 *Inst.* 193.

Who are to attend,

All knights, gentlemen, yeomen, labourers, servants, apprentices, and villeins, and likewise wards and

and other young men that be above the age of 15 years, shall be compelled to attend. But not women, ecclesiastical persons, and such as be decrepit or do labour of any continual infirmity. *Lamb. Eiren. l. 3. c. 1. 19 Vin. Abr. 431.*

And all persons under the degree of a peer are bound to attend upon warning of the sheriff. *Stat. 2. 3 Co. 142. 1 Inst. 193. H. 5.*

Antiently, great men had castles, fortresses and liberties, whereby they resisted the sheriff in executing the king's writs, which created great inconvenience; the stat. of *Westm. 2. c. 39.* hindered the sheriff from returning rescues to the king's writs of execution; the words are, "Al-
" so false answers, that they could not execute
" the king's precept for the resistance of some
" great men, redound much to the dishonour of
" the king. And as soon as the bailiffs testify that
" they found such resistance, forthwith all things
" set apart (*taking the power of the shire*) the
" sheriff shall go in person to do execution; and if
" he find his under-bailiffs false, he shall punish
" them by imprisonment, and if he find them true,
" he shall punish the resisters by imprisonment,
" from whence they shall not be delivered without
" the king's special command. And if the sheriff
" find resistance, he shall certify to the court the
" names of the resisters, aiders, consenters, com-
" manders and favourers."

The words of this statute have been construed to extend to executions only, and not to writs on *mesne process*; and that the sheriff was not obliged to raise the *posse comitatus*, where the party wasailable, for that it cannot be presumed, that in such cases, the king's writ will be disobeyed.

1 Roll. Ab. 807. 1 Roll. Rep. 388. 440. Cro. Jac. 419. It was adjudged and agreed by the court, that though the sheriff was not obliged, that yet he may take his *posse* to serve *mesne process*, in case of resistance. *Cro. Eliz. 868. 2 Lev. 144. 3 Lev. 46. Noy 40. Moor 852.*

The construction of this act extends to executions only, and not to *mesne process*.

It was adjudged he may take *posse comitatus*.

But

Must take after
resistance.

But he must take it *after resistance*, and not before; for *sequi debet potentia justitiam, non precedere.*
2 *Inst.* 454.

If distress be im-
pounded in a
castle, sheriff
may raise posse
comitatus.

By *W. 1. c. 17.* If a distress be impounded in a castle or fortress, and detained, the sheriff or bailiff taking with him the power of the shire, &c. may cause the said castle or fortress to be beaten down.

Sheriff not con-
fined to numbers.

The sheriffs are not confined to any number of persons, but it is referred to the discretion of the sheriff, &c. what number they will have to attend upon them, and how and in what manner they shall be armed, weaponed, or otherwise furnished.
Dalt. 355.

Sheriff's officer
took 300, and
held lawful.

The sheriff's bailiff to execute a replevy, took with him 300 men armed, and held lawful, for the sheriff's officer hath power as well as the sheriff.
3 *H. 7. 1. Dalton, ibid.* 5 *Co.* 72.

But bailiff must
have warrant
from sheriff to
do it.

It seems when the power of the county is to be raised or taken, that the bailiff must have warrant from the sheriff to do it, and that he must be a known bailiff or officer, that must do it. *Ibid.*

If he takes posse
without cause,
yet all discharg-
ed, and may
justify.

If the sheriff, &c. shall take *posse comitatus* with them, without any sufficient cause, yet such as therein shall be aiding to the sheriff or his said officers or servants, may well justify such their doing by the commandment of the sheriff or his said officers, &c. 5 *H. 7. 4, 5.*

Bound to execute
executions,
therefore to raise
posse, &c.

The sheriff is bound to do and *make executions at his peril*, for if he take the defendant on a *ca. sa.* and he is rescued from him, before he can bring him to prison, though he returns the rescue, yet this shall not excuse him, for when judgment is passed, and he and his bail do not surrender him, nor pay the condemnation money, the sheriff ought to take the *posse comitatus*; and consequently cannot be a good return, that he took the body, but that it was rescued; and the party may have an action of escape against the sheriff on this return; and this is provided by the statute *W. 2. c. 39.* which was made to prevent sheriffs from returning rescues to the king's writs. *Cro. Jac.* 419.

1 *Roll. Rep.* 388. 440. 3 *Bulstr.* 198. But to mesne process he may return rescue. 3 *Lev.* 46.

The reason why such return is not good is, that antiently every man, being in *decenna*, had bail, and now is presumed to have bail ready to be answerable for his forthcoming, and therefore the sheriff is not obliged in duty to take the *posse comitatus* to assist him; but when judgment is passed, and his bail do not surrender him, nor pay the condemnation money, then a *capias ad satisfaciend.* issues, to which there can be no bail, and there it is presumed, that he will not be forthcoming, because neither he nor his bail have satisfied the judgment; and therefore the sheriff then ought to take the *posse comitatus*, and consequently cannot be a good return that he took the body, but that it was rescued; and the party may have an action of escape against the sheriff on this return, or a new *capias* for the return of an ineffectual execution; but if the sheriff had permitted him to go at large, he could have had no new execution, for an effectual execution is returned, and so there is a pledge for satisfaction in the custody of the sheriff, for which he is only answerable.

1 *Ro.* 904. *Cro. Car.* 240. 255.

If the sheriff takes goods on an execution, he cannot return rescued, because he ought to have taken the *posse comitatus*; and if he returns a rescue, he charges himself with the seizure. *Sand.* 343. *Mildmay v. Smith.* 2 *Roll. Rep.* 57. where it was held, that a return of rescue was no excuse to the sheriff; for he might have taken the *posse comitatus*.

The sheriff, if need be, may raise the power of the county to assist him in the execution of a precept of restitution, and therefore if he make a return thereto, that he could not make a restitution by reason of resistance, he shall be amerced. *Lamb.* 157.

But though it be the duty of a sheriff or a minister of justice, having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance;

The reason.

If rescue be returned after goods taken.

Sheriff may raise power of the county.

Not to raise posse comitatus on civil process, unless they find resistance.

ance; yet it is said, *not to be lawful further to raise a force for the execution of a civil process, unless they find a resistance*, and it is certain they are highly punishable for using any needful outrage or violence therein. 3 *Inst.* 161. 2 *Inst.* 193. *Hob.* 62. 264.

To acquaint the deputy lieutenant, if he can not do execution by a posse comitatus.

It is said, a sheriff who cannot do execution by a posse comitatus, ought to acquaint the deputy lieutenants of the county; and if they assist not, he may acquaint the king and council; and yet the sheriff shall be amerced if he return that he cannot do execution. 1 *Keb.* 99. pl. 91. *Bush v. Chamberlain.*

Not lawful to disturb the execution of the king's writ.

It is holden for a maxim of law, that it is not lawful for any man to disturb the ministers of the king in the due execution of the king's writs, or process of law. 2 *Inst.* 194.

Two Sheriffs considered.

In London and Middlesex both sheriffs make but one.

If one dies, office at an end.

The beginning of the custom is founded on the charter of K. J.

IN London and Middlesex, it has been already observed, both sheriffs make but one in both counties; and therefore it seems to be a good cause of challenge, if the writ appears to be returned by one sheriff only; and if one of them dies, the office is at an end till another is chosen. The first beginning of this custom seems to be upon the foundation of the charter of *King John*, who granted the sheriffwick of London and Middlesex to the mayor and citizens of London at the farm of 300 *l.* per annum. So that being a grant in fee of the sheriffwick to them as a corporation, they had a right to name one or more officers, in order to execute the same; and they thought it proper to name two officers indifferently, to execute both offices, and both of them to execute as one sheriff, though the writ in Middlesex is directed to them as one, viz. *Vic' Com' Middx. præcipimus tibi*, in that of London, *Vice comitibus London' præcipimus vobis*: and the reason of this difference seems to be, that before this grant of the sheriffwick to the corporation,

Reason why called in Middlesex one sheriff, and London two.

corporation, the corporation nominated to the crown and the crown appointed the sheriffs for London, and the London sheriffs were responsible to the king for the London profits of the sheriffwick, and that was the reason why two were appointed, that both might be responsible; and this nomination was, that the citizens might exhibit to the king responsible persons; and that seems to be the reason, that in many of the corporations that are cities and counties, there are two sheriffs; but when by the charter of King John the sheriffwick of London and Middlesex was granted to the citizens as a perpetual fee farm, then they entered their sheriffs, which before were nominated for London only, and the election of the two, was for both sheriffwicks, but the direction of the king's writs were as before, viz. in London to the two sheriffs, and in Middlesex, as if there was only one. *Gillb. H. C. B.* 136, 137. 3 *Co.* 72. 1 *Show.* 289. 162, 163. 2 *Show.* 262. 286, *Lev.* 284. *Hob.* 70. *Privi. Lond.* 5, 6, 7. 272, 273.

An information was brought against three, whereof one of them was one of the sheriffs of the city of Chester, and the *ven. fac.* was awarded to the other sheriff. It was suggested on the roll, that one of the sheriffs is party. Question was, whether it was good? And it was adjudged to be well awarded. And as to an objection which had been made, that both are but one officer in law; it is plainly otherwise; for where there are two sheriffs, and one is challenged, the other shall supply that defect, and not the coroner; for he is not the person to execute the process of the court, but only where the proper officer is wanting, which cannot be where there is one sheriff. 4 *Mod.* 65, 66. *K. & Q. v. Warrington*, 21 *H.* 6. 8. pl. 17. 1 *Salk.* 152. says, for the other may execute the writ, but he does it in the name of both. *Show.* 327. *Accord. Comb.* 191. 12 *Mod.* 22. *S. C.* *Carth.* 214. cites it as so held in the cases of *Bethel v. Harvey*, and of *Rich v. Ployer*.

Information against three, one of them, one of the sheriffs of C. and *ven. fac.* awarded to the other sheriff, it was suggested on the roll one was a party, held that where there are two, and one a party, the other shall supply the defect.

Coroner not the person to execute but where the other sheriff is wanting.

Two sheriffs
make but one of-
ficer, if one dies,
office at an end.

Where there are two sheriffs, they regularly make but one officer, and therefore if one of them dies, the office is at an end, until another is chosen, and the courts of *Westminster* can award no process to the other. 4 *Mod.* 65. 1 *Show.* 289. *Mod. Caf. Law & Eq.* 304.

One sheriff
makes his re-
turn without the
other, no return.

If one sheriff of *London* make his return without his fellow, this being as no return at all, is not aided by the statute, which aids insufficient returns. *Hob.* 70. *Lit. Rep.* 129.

Error to reverse
an outlawry.

In a writ of error to reverse an outlawry, among other errors it was assigned that the direction of the exigent to the sheriffs of the city of *Lincoln* was *quo capias corpus ejus ita quod habeas corpus ejus*, &c. where, they being two sheriffs, the writ ought to have been *capiatis & habeatis*; *sed non allocatur*; for they both be but one officer to the court; and although in the end of the writ it is *ita quod habeatis ibi hoc breve*, yet there is no repugnancy, for it is good both ways. *Cro. Jac.* 576. *Gargrove v. Markham.*

If two sheriffs
and action against
both for an es-
cape, if one dies,
writ shall not
abate.

If there are two sheriffs of the same place, and an action is brought against them both for an escape, if one of them dies, yet the writ shall not abate; for it being in the nature of a trespass, and merely personal, the party can only have remedy against the survivor. *Cro. Eliz.* 625. *Benion v. the Sheriffs of York.*

A prisoner in
Wood-street on
a plaint, escaped,
action brought
against both she-
riffs, and held
good, tho' they
have different
compters, and
plaint levied be-
fore one only.

A prisoner in *Wood-street Compter*, on a plaint against him, escaped; whereupon the plaintiff brought his action against both sheriffs of *London*; and on demurrer to the declaration, the plaintiff had judgment; and it was resolved, that though the plaint was levied before one defendant only in his court, and prisoner escaped out of his compter, yet that both sheriffs had the custody of the prisoners in both compters, and by consequence the action was well maintainable against both. *Car.* 145. 1 *Show.* 162.

Execution.

Capias ad satisfaciendum.

THE first species of execution is by writ of *Capias ad satisfaciendum*, which is a writ of the highest nature, inasmuch as it deprives a man of his liberty, till he makes the satisfaction awarded, and therefore when a man is once taken in execution by the sheriff, on this writ, no other process can be sued against his lands or goods.

By this writ, the sheriff is directed to take the body of the defendant, and have him at *Westminster*, on a day therein named, to make the plaintiff a satisfaction for his demand. And, if he does not then make satisfaction, he must remain in custody till he does.

When the defendant is once in custody upon this process, he is to be kept in *arcta & salva custodia*: and, if he be afterwards seen at large, it is an escape; and the plaintiff may have an action thereupon for his whole debt. For though, upon arrests and what is called *mesne process*, being such as intervenes between the commencement and end of a suit, the sheriff, till the statute 8 & 9 W. 3. c. 27. might have indulged the defendant as he pleased, so as he produced him in court to answer the plaintiff at the return of the writ: yet upon a taking in execution, he could never give any indulgence; for, in that case, confinement is the whole of the debtor's punishment, and of the satisfaction made to the creditor.

If a *ca. sa.* be against two or more, the sheriff may take the bodies of *all* in execution. 5 Rep. 86. 11 Rep. *Godfrey's Case*.

A rescue of a prisoner in execution, either going to gaol or in gaol, or a breach of prison, will not excuse the sheriff from being guilty of and answering for the escape; for he ought to have suffi-

Capias ad satisfaciendum what sheriff to do.

If defendant dies in execution, plaintiff may have one against his lands, &c.

Sheriff, if he takes the defendant on this writ, he is to keep him in safe custody.

He is not to indulge him, and why.

If a *ca. sa.* against two or more.

Cannot to this writ return a rescue.

cient force to keep him, seeing he may command the power of the county. *Cro. Jac.* 419.

May not break doors, &c.

On this writ, the sheriff may not break open any man's house to arrest him, but in all cases, when the door is open, he may enter to make execution of the body. But yet in favor of executions, which are the life of the law, and especially in cases of great necessity, or where the safety of the king and commonwealth are concerned, the general case is excepted, when the writ is at the suit of the king, then the sheriff or his officer, after request to have the door opened, and refusal, may break open the house to take the body. *5 Co.*

Except where the king is a party and then the general rule is excepted.

91. 2 Show. 87. *pl.* 78. But he ought first to signify the cause of his coming, and request the owners to open the door. *5 Co.* 91. *Cro. Eliz.* 908. *4 Leon.* 41. *pl.* 111. *Cro. Eliz.* 909. *Ibid.* 714. *pl.* 17.

But he ought first to acquaint, &c.

House no protection for another.

But a man's house is no protection for another, therefore the sheriff may break open to take him. *Fof. Cr. L.* 319.

It is said sheriff cannot receive the money on a *ca. sa.*

It is said that the sheriff cannot receive the money on a *ca. sa.* as he can on a *fi. sa.* for on the command of the writ, he is to take the body, and bring it into court, that the plaintiff may be satisfied, so that the money is to be paid into court in order to discharge the body of the defendant, and not to the sheriff below. *Latch* 177.

But payment to the plaintiff's attorney on record is a good payment to the plaintiff himself. *2 Show.* 139. *pl.* 116.

Plea of payment to the sheriff, not good.

In debt on a judgment the defendant pleaded that he was taken in execution by *ca. sa.* on that judgment, and had paid the money to the sheriff, and it was held to be no plea; because though he does pay it to the sheriff, yet the sheriff may be insolvent, or may die, and leave no assets, and then the party will be never the better. *Freem. Rep.* 842. and so it was held in *Baker's case*, who pleaded payment to the marshal, being in execution, and held to be no plea. See *Lutw.* 587. *12 Mod.*

385: and in 12 *Mod.* 230. the sheriff hath no power to receive money of the defendant upon a *capias*, for his business is only to execute his writ. And if in such case the defendant pays the sheriff, and he afterwards becomes insolvent, and does not pay the plaintiff, such payment shall not excuse the defendant. *Per Holt C. J.*

At common law no officer, whose office related to the administration of justice, could take any reward for doing his duty, but what he was to receive from the king. 10 *Mod.* 139. And the fundamental maxim of the common law is confirmed by stat. 3 *Ed.* 6. c. 26. whereby it is ordained, that, no sheriff shall take any reward to do his office, but shall be paid of that which he takes of the king, and that he who so doth, shall yield thrice as much, and shall be punished at the king's pleasure.

So much hath this law been thought to conduce to the honour of the king and welfare of the subject, that all prescriptions whatsoever, which have been contrary to it, have been holden void. 4

Bacon Abr. 463.

The common law giving no fees to sheriffs, made them backward in executing writs, by reason of the great danger both in taking desperate men; by reason of resistance, and also in detaining them, for fear of escapes; so that they could have great rewards, or otherwise would do nothing; whereupon the parliament thought fit to fix their fees by stat. 29 *Elix.* c. 4. *Litch* 18. *Cro. Eliz.* 654. pl. 15.

The crown is not bound by the stat. 29 *Elix.* not being named, 4 *Burr.* 1984. However an action brought in the exchequer by the sheriffs of *London*, upon a bail bond taken by them in their own names for the appearance of a defendant taken upon an exchequer process on the prosecution of the king's attorney-general on behalf of the crown for custom house penalties and forfeitures; and a *testatum capias ad satisfaciendum* to the sheriff of

At common law no reward was to be paid to sheriff for doing his duty.

And by stat. no sheriff is to take reward to do his office but of the king.

This was conducive to the honour of the king and welfare of the subject.

But sheriffs were backward in executing their writs before an act was made to state the fees.

Crown not bound.

But if a *ca. fa.* issue on a judgment or a bail bond taken on an exchequer process, and the defendant is taken, sheriff entitled to his poundage.

Herts

Herts against the bail; cannot be considered as the suit of the crown, tho' averred to be for the benefit, and on behalf, and at the expence of the crown, nor shall the sheriff who executed it be precluded from his poundage. *Lake v. Sheriff of Herts*, 4 Burr. 1981. The stat. 29. El. c. 4. does not extend to executions on statutes, recognizances, &c. because the judgment is not *in invitum* Salk. 332.

Fees were often taken on a *ca pias ad satisfaciendum* for the whole penalty acknowledged.

To prevent which sheriffs are not to take more poundage than the sum indorsed on the writ.

Guilty of extortion; and forfeit treble damages to party grieved.

As also 200l.

What stat. extends to.

By stat. 3 Geo. 1. c. 15. *sect.* 17. reciting, that whereas it often happens that small sums only are remaining due upon judgment, statutes and recognizances, given, acknowledged, and entered into for great sums and penalties, and nevertheless in these cases upon executing of writs of *ca. sa.* the sheriff demands and takes for his fees, poundage for the whole money, for which said judgments, statutes or recognizances are entered or acknowledged. For remedy of which grievance and inconvenience, be it enacted, "that from and after the last day of *Michaelmas* term 1717, poundage shall in no case be demanded or taken; upon executing any writ of *capias ad satisfaciendum*, or upon charging any person in execution by virtue of such writ, for any greater sum than the real debt *bona-fide* due, and claimed by the plaintiff amounteth unto, which sum "the plaintiff shall be, and is hereby obliged to mark and specify on the back of such writ, before the same be delivered to the sheriff to be executed." "And if any sheriff, &c. shall take greater fees, he is guilty of extortion; and being convicted shall forfeit to the party grieved, treble damages, and double the sum extorted, to be decreed by the court out of which such writ issued, in a summary way. And every person so offending shall forfeit 200l. to be recovered by bill, plaint or information."

This statute extends to all judgments in *Westminster*, and that whether the sheriff executes them in a county or a franchise, he shall have his fees. And so it is of a bailiff of a liberty, when he executes

cutes any execution on a judgment given in the courts at *Westminster*, within his liberty. *Salk.* 331. But on process on a judgment given in a court of corporation, or liberty, it is otherwise. *Ibid.*

For executing a *ca. sa.* the sheriff is entitled by stat. 29 *Eliz. c. 4.* to 12 *d.* in the pound, when the sum exceedeth not 100 *l.*; and 6 *d.* for every 20 *s.* above that sum, that he shall take the body in execution for, which is called poundage, But

What sum for poundage.

In ——— term 1785, a special case was made by Lord *Mansfield* from the sittings at *Guildhall*, and the question was, whether a plaintiff should pay to the sheriff under the above act poundage for his debt, the prisoner being in gaol, and not having made satisfaction? It was held, that the sheriff was entitled to his poundage whether the plaintiff received the debt or not, and judgment was given for the plaintiff.

A special case made on poundage, party being in gaol.

The sheriff had the defendant in execution on a *ca. sa.* plaintiff delivered him on a *habeas corpus* to remove him to the king's bench prison. He upon this insisted to be paid his poundage, before he parted with the body. *Cur.* said, they could not be making bargains with people to obey their process, which they could enforce an obedience to, and left the sheriff to his action for his fees, which was his legal remedy. *Str.* 1262.

Sheriff had defendant in execution, *habeas corpus* was brought to remove him; sheriff insisted on his poundage, but court said he might bring his action.

An under-sheriff refused to execute a *ca. sa.* till he had his fees; *Cur.* said, plaintiff might bring an action against him for not doing his duty, or might pay him his fees, and then indict him for extortion. *Noy* 75. *Salk.* 331.

Under-sheriff refused to execute a *ca. sa.* before payment of the poundage, but was obliged.

Bird was arrested at the suit of *Staple* on a *ca. sa.* *Bird* pays the money to the sheriff; at the return, the sheriff returned, that he took the defendant who paid into his hands 30 *l.* 6 *s.* 6 *d.* the sum mentioned in the *ca. sa.* and after, and before the return, 11 *May*, a *fi. sa.* against the goods of *Staple*, the plaintiff in the *ca. sa.* ars. *Bird* executor, the defendant in the *ca. sa.* for 29 *l.* 10 *s.* was delivered

Sheriff cannot apply the money levied on a *ca. sa.* to a *fi. sa.* he has against the plaintiff as executor, at the suit of the defendant in the *ca. sa.*

to the sheriff, and that he levied the same out of the money received under the *ca. sa.* Upon this return and affidavit of facts, application was made to the court, and rule obtained to shew cause why he should not pay plaintiff's attorney the said 30*l.* 6*s.* 6*d.* deducting poundage, which rule was made absolute upon hearing counsel on both sides. *Staple v. Bird, Barnes* 214.

N. B. Had this *fi. sa.* been against *Bird* himself, I think the court would have applied the money, deducting poundage and the attorney's costs, towards a satisfaction of the *fi. sa.* *Vide* 3 *Wilf.* 396. as to application of two judgments.

A sheriff's officer is not liable to the penalties of 32 *Geo.* 2. *c.* 28. *s.* 1. for carrying a person taken in execution to prison within 24 hours; that clause only relates to persons arrested on *mesne process.* *Evans v. Atkins, 4 Term Rep.* 555.

An action of debt lies by the sheriff for his fees for executing the writ. *Jayson v. Ralsh, Salk.* 209. 331.

Fieri Facias.

Fieri facias.

THE next species of execution is against the goods and chattels of the defendant, and is called a writ of *fieri facias*; from the words in it, where the sheriff is commanded *quod fieri faciat de bonis*, that he cause to be made of the goods and chattels of the defendant, the sum or debt recovered, and have it in court on the return day (a).

At common law, this writ bound the goods from the *teste*.

This writ at the common law, bound the defendant's goods from the *teste* of the writ, so that any sale after that was void, because the goods from the time of the *teste* were attendant to answer the execution; for the execution at common law being only on the goods, if they had not allowed

(a) This writ in point of form invariably pursues the judgment; and therefore it has been held, that a *special* execution is not warranted by a *general* judgment. 1 *Term Rep.* 80.

the

the goods to be bound, as if the party had transferred them, they thought every execution might be avoided by sale; and it was presumed, that the sheriff should execute such writs immediately, and that there would be notice in the neighbourhood, that they might not be deceived; but the goods were not bound by the judgment; because the judgment was in force for a whole year; and it would be hard, that none against whom judgment was pronounced, should buy or sell within that time; but men abused the notion of the retrospect of the goods being bound by the *teste* of the writ, to make sales uncertain; for they took out writs one under the other, without delivering them to the sheriff, by which they bound the goods of their debtors, and consequently made their sales and commerce uncertain; to prevent which, the statute of frauds and perjuries, binds the goods only from the delivery of the writs to the sheriff, enacting, "That no writ of execution shall bind the property of the goods, but from the time of its delivery to the sheriff, under-sheriff, or coroners; who upon receipt thereof (without fee) shall indorse on the back thereof, the day of the month, and year, when they received it." 29 Car. 2. c. 3. made perpetual, by 1 Jac. c. 17. s. 5. which was no more than restoring the old law, which supposed the writ to be delivered to the sheriff immediately from the *teste*. 8 Co. 171. Cro. Jac. 451. Cro. Eliz. 174. Sid. 271.

Abuse of this notion.

To prevent which, statute of frauds was made and enacts, That no writ of execution shall bind the property.

This must be intended as to strangers, who might have a title to the goods between the *teste* of the writ, and delivery thereof to the sheriff; but as to the party himself, his executors and administrators, the goods since the statute, as before, are bound from the *teste*. 2 Vent. 218. Comb. 33. 2 Show. 485; 6 Mod. 225.

This must be intended as to strangers, but as to the party, the goods are bound from the *teste*.

If two writs of *fi. fa.* bear *teste* the same day, the sheriff at common law, and now since the statute, is bound to execute that which was first delivered to him; Salk. 320. Carth. 419. therefore the

If two writs of *fi. fa.* bear *teste* the same day, bound to execute the first.

the time ought to be marked, when the sheriff receives those writs in office.

If two writs be delivered to the sheriff on *different* days and the sheriff execute the last first by making sale of the goods, the sale will stand good, and the person who delivered the first writ to the sheriff shall have his remedy by an action against him. *Carth. 420. Smallcomb v. Buckingham.*

That though in general the sheriff must first levy on the writ which he *first* receives, yet if the plaintiff in that writ directs it not to be executed *before a distant day*, and in the mean time another execution comes, the sheriff is not to keep the first hanging over the head of other creditors, but is to levy under the last execution, as if no other had ever been delivered to him. *Kempland v. Macauley and another, Peake's Cas. N. P. 65. Lord Kenyon.*

If two writs be delivered on different days and no sale made, the first to have a priority, tho' the seizure was made under the second first.

Where two writs of *fi. fa.* against the same defendant are delivered to the sheriff on *different* days, and no sale is actually made of the defendant's goods, the *first* execution must have the priority, even though the seizure was first made under the subsequent execution; and if the person claiming under the second execution pay the sheriff the amount of the debt under the first execution for his security, the court will not compel the sheriff to refund that money on motion. The principle of law is, that the person whose writ is *first* delivered to the sheriff, is entitled to a *priority*; and that the goods of the party are bound by the *delivery of the writ. Ashhurst J. 1 Term Rep. 731. Hutchinson v. Johnson.*

The plaintiff delivered a *fi. fa.* to the sheriff, under which his officer levied, and a bill of sale was made: then the sheriff discovered a *former* execution in the office and returned *nulla bona*; on this case the defendant obtained a verdict, and on motion for a new trial, court ordered the verdict to be entered for the plaintiff, for the sheriff having once sold under the plaintiff's execution, was answerable to him for the debt. *Rybot v. Peckham, cited in 1 Term Rep. 731.*

If

If a *fi. fa.* is fraudulently or insufficiently executed, and no person left in possession, and another plaintiff gets his execution executed afterwards, the second shall stand good; and the sheriff may return *nulla bona* on the first. 1 *Wils.* 44. *Bradley v. Windham.* It seems it was left to the jury whether the execution that first came into the house was intended to be, or was really executed, who thought it was not. 1 *Salk.* 320. 5 *Mod.* 375. 1 *Lord Ray.* 251.

Fraudulent execution and another comes, 2d good.

By virtue of this writ the sheriff, on the seizure of the goods, hath such a property in them, that he can maintain trespass or trover; for he has the goods to sell, that he may have the money in court; and therefore, when he once seizes them, he has the property in them for that purpose. *Sid.* 438. pl. 3. *Vent.* 52, 53. *Mod.* 30 pl. 75. 2 *Saund.* 47. *Lev.* 282. 2 *Vent.* 218. *Salk.* 222. *Vent.* 52. And if the defendant dies after the writ delivered to the sheriff, he may execute the same on the goods, in the hands of his executor or administrator, of the deceased. 3 *Wils.* 399. *Comb.* 33. 2 *Lord Ray.* 808. 850. 1073. 12 *Mod.* 130. 241. because the sheriff was entitled to seize them from the time of the writ.

Sheriff hath such a property as he may, if taken out of his hands, maintain trespass, &c.

If the sheriff seizes goods in his hands to the value of the debt, and pays part, and is discharged from the office without having sold the rest, or having returned his writ; that notwithstanding such discharge, and without any *venditioni exponas*, he may sell the goods remaining in his hands, and such sale and execution shall be good. *Roll. Abr.* 893. *Salk.* 323.

If he dies.

If he seizes goods to the value of the debt, and pays part, and is discharged, he may sell without a vend. exponas.

By this writ, the sheriff is commanded to levy the debt of the goods, and chattels of the defendant, and he is therefore indemnified as far as he acts necessarily in order to the taking of the goods; and therefore, if he breaks open a chest, in which goods are locked up, or a barn, not adjoining to a dwelling-house, which is made for the conservation

This writ indemnifies the sheriff, and therefore he may break open a chest, &c.

but not the dwelling-house.

But if he once gets into the house, there begins the execution.

If sheriff be a trespasser, yet if the writ is served and money levied plaintiff shall have the benefit of it.

Protection of house, not for a stranger's goods.

Protection of a man in his own house, is agreeable to the common law.

Not to break open outer doors.

May sell an estate for years.

vation of goods only, he is indemnified by the writ; but, he is not by the writ authorized to break the dwelling-house, which is built for the protection of the man and his family. *Sid.* 189. *Keble*. 698. 2 *Show.* 87. *Palm.* 54. If he gets into the house, the doors being open, there begins the execution, for the rest of the house is only for the protection of the goods; and therefore, he may enter and finish the execution of his writ: But, though the sheriff be a trespasser in the execution of the process, yet when the writ is served, and the money levied, the plaintiff shall have the benefit of it, and the party is left to his remedy against the sheriff. *Brownl.* 50. 5 *Co.* 91. 3 *Inst.* 162. *Mod.* 668. *Yelv.* 28. *Cro. Eliz.* 908. *Dalt.* 350. But the protection of a man's house, extends only to himself and family; for if a stranger, to elude execution, receives the defendant's goods into his house, then the sheriff's authority shall reach them; because a design to elude the law, shall not be protected by the law; the sheriff might seize him in the stranger's house, because the defendant's leaving his own house, has waived the benefit of the law. 5 *Co.* 93. *Sid.* 186. That protection of a man in his own house, was very agreeable to the antient law; because, in personal contracts, they did only subject their chattels, and not their persons, nor freeholds; and, though afterwards, by subsequent laws, the freehold and person, were made liable to execution; yet, they have not taken away the privilege a man had by common law to defend his own house, which still continues, unless where the execution is by *habere facias seisinam*, or *possionem*. *Gilb. Ex.* 18.

The sheriff may not break open any outer doors, to execute this writ. 5 *Rep.* 92. but must enter peaceably; and may then break open any inner door, belonging to the defendant to take the goods. *Palmer* 54. And he may sell the goods and chattels (even an estate for years, which is a chattel real) 8 *Rep.* 71. of the defendant till he has raised enough

enough to satisfy the judgment and costs, first paying the landlord not exceeding *one* year's rent. *Stat. 8 Ann. c. 14.*

By this writ, the sheriff hath authority to seize every thing that is a chattel, viz. leases for years, be they of ever so long continuance. *4 Co. 74.* but he cannot turn the lessees out of possession. *2 Show. Rep. 85. fructus industriales*, fruits of industry, as corn growing, or sown on the ground, which goes to the executor; and if he sell the corn on the land, the party to whom the sale is made, shall have liberty of cutting and carrying it away, by virtue of such sale. *5 Co. 11. Dalt. 145. 556. Cro. Eliz. 374. Owen 70, 71.* But furnaces annexed to the freehold, apples upon trees which belong to the freehold, and go to the heir, cannot be seized by the sheriff on this writ, because they are not *bona et catalla*, goods and chattels, and consequently, not within the authority of the writ; and at common law, could not be touched by an execution. *Cro. Jac. 73. 4 Co. 74. Dyer 363. Gilb. Ex. 19.*

Sheriff's authority, and what he may seize.

Com. 1 Salk. 368.

What he must not seize.

It is a *quære*, whether he may seize, and sell the *grass growing*? because grass grows naturally out of the land without any tillage, but after it is cut down, there can be no doubt. *Dalt. 556.*

If a plaintiff cannot find sufficient effects of the defendant to satisfy his judgment, the court will order the sheriff to retain money in his hands of the defendant, which he had levied in another action at the defendant's suit, provided the attorney's bill be deducted: and *Lord Mansfield* said there were old cases, where it was held, that the sheriff could not take money though found in defendant's scuitore, and that a quaint reason was given for it, viz. that money could not be sold. *Armistead v. Philpot, Dougl. 230.*

Money of defendants in the hands of the sheriff.

It is said bank notes cannot be taken in execution. *Francis v. Nash, Rep. temp. Hard. 52. Sed quære.* Deeds and writings cannot be taken in execution. *Ib.*

Bank notes.

Deeds.

The

- Personal estate liable.** The whole estate personal, is liable to be sold under a *fi. fa.* except wearing apparel; and it hath been held, that if the party hath two gowns, the sheriff may sell one of them. 3 Co. 12. Comb. 356.
- Gowns.**
- Sheriff may take moveables.** And the sheriff may take moveable goods, as cattle, corn in the barn, &c. household stuff, money^(a), plate, apparel, &c. 3 Co. 12. Co. Litt. 390. b. Dalt. 145.
- Goods pawned, demised, or distrained.** Goods pawned, shall not be taken for the debt of him who pawned them, during the time they are pawned. Kitchen 226. Nor goods demised, or letten for years, nor goods distrained, nor before seized on an execution; Bro. Pledges 28. Cro. Car. 149. 1 Roll. 893. 1 Show. 174. unless such first execution were by fraud. Farres. 37, 38.
- If a soap-boiler, &c. being an under-tenant, puts up fats, &c.** If a soap-boiler, or other trader, being an under-tenant, for the convenience of his trade, puts up fats, coppers, tables, partitions, and paves the back-side, &c. the sheriff may take them on a *fi. fa.* in the like manner, as the lessee might have removed them during the term. Salk. 368. Otherwise, where such trader makes hearths and chimney-pieces to complete the house, and not for the conveniency of his trade.
- If execution against partners.** If on an execution against one of two partners, the partnership goods are taken and sold, the sheriff may seize and sell all, and he is to pay over to the other a share of the produce proportioned to his share of the partnership effects. Eddie v. Davison, Dougl. 627.
- Must seize the whole, and sell a moiety.** In Salk. 392. it is said, that he must seize the whole, and sell a moiety thereof undivided, for that the vendee will be tenant in common with the other partner. 1 Show. 173. Comb. 217.
- An annuity for years may be taken.** A person had an annuity for 21 years, granted by 2. Eliz. payable by her receiver of her court of wards, which on a *fi. fa.* was extended and sold, and held good, for being an annuity for years, and payable by the receiver, it is in nature of a

(a) 12 Mod. 614.

rent-charge for 21 years, and is grantable over and vendible, and not like an annuity which chargeth the person only. *Cro. Jac. 7. York v. Fuirne.*

The goods ecclesiastical of clergymen, are not to be taken by the sheriff, but by the bishop. *2 Inst. 472.* who may seize and sell the profits of the benefice, and he must return *feri feci*, and not *sequestrari feci*, upon the writ. *2 Mod. 257.* The bishop may, like the sheriff, be called upon to return the writ, by rule of court, *1 Str. 87.* and if he make a false return, will be liable to an action. *Gilb. Execu. 26. 1 Ld. Ray. 265.*

Goods ecclesiastical not to be taken.

Bishop may be called on to return the writ by rule.

The sheriff by his authority, has a right (as before said) to sell a term for years; and if he sells it with the general words, "*All title, estate, right and interest of the defendant,*" the sale is good, though there be a mistake in the reciting of the commencement or end of such lease; for the sheriff hath the same authority to sell the defendant's goods, in order to execute the judgment, and pay the defendant's debts, as the defendant had over his own property; and therefore, as such general words would have passed his chattels from the defendant, so it shall in case of the sheriff, who is to satisfy the defendant's debt. *4 Co. 74.*

Sheriff may sell a term for years.

But if he sells with the general words, "*All, &c. good.*"

If a sheriff reciting, that the defendant hath a term for years, sells it by virtue of a *fi. fa.* the sale is good, for it cannot be intended, that the sheriff should certainly know the beginning and end of the term. *Cro. Eliz. 584. 4 Co. 74. Palmer's case.*

It is sufficient for him to state, that the defendant is possessed of a term of years yet to come and unexpired, and to assign all his interest therein generally, for if he attempt to state it particularly, and fail, the vendee will not have good title. *4 Co. 74. Cro. Eliz. 584. 3 Term Rep. 294.*

What is sufficient to state.

It is said, that a sheriff on a *fi. fa. or levari facias*, cannot sell an estate for life, which being a freehold, can be no more affected by these writs, than any estate of inheritance. *3 Co. 13.* But it seems

May sell an estate per autre vie, upon the stat.

seems to be admitted, that the sheriff, since the *Stat. 29 Car. 2.* may sell an estate *pur autre vie*. *Comb. 291. — Sed quære.*

If defendant will go out of possession.

If the defendant will consent to go out of possession on sale of the lease, the sheriff may put the vendee in possession, *3 Term Rep. 293.* but he cannot be forcibly expelled. The vendee must bring his ejectment, if he refuse, *2 Show. 85.*

Equity of redemption.

Where the defendant has only an equity of redemption of a leasehold estate, it seems that an execution will not affect it, as the legal estate is in the mortgagee, *3 Atk. 739.* The plaintiff's only remedy in that case is, by filing a bill in equity, to redeem the estate, by paying off the principal due on the mortgage. *Ibid.*

May take goods fraudulently sold.

The sheriff may take goods fraudulently sold or conveyed away by the defendant, and a principal badge of fraud is, the defendant's continuing in possession. *Prec. in Chan. 286, 7.*

If a creditor by *fi. fa.* seize goods, and suffer them to remain long, and another execution come, it is evidence of fraud.

If a creditor by *fi. fa.* seize the goods of a debtor, and suffer them to remain long in the debtor's hands, and another creditor obtain a subsequent judgment and execution; it has been determined, that this is evidence of fraud, and the goods in the hands of the debtor remain liable. *1 Vez. 245. 456.*

If there be a bona fide sale before delivery of the writ, cannot be taken; if sold fraudulently, and he sells to another.

If a defendant sell his goods *bona fide*, and for a valuable consideration, before the delivery of the writ to the sheriff, they cannot be taken in execution; and though he sell them fraudulently, yet if they afterwards be sold to another *bona fide*, they are not liable to be taken in execution in the hands of the second vendee. *Godb. 161.*

Goods of wife settled cannot be taken.

In an action against the husband, goods cannot be taken in execution on a *fi. fa.* if vested in trustees for the benefit of the wife. *Calop. Rep. 432. 3 Term Rep. 618.*

The goods of a testator cannot be taken for a debt of the executor.

And in an action against an executor for his own debt, the goods of the testator, in the hands of the defendant, cannot be taken in execution. *4 Term Rep. 621. Farr & al. v. Newman.*

If *A.* indebted to *B.* and *C.*, after being sued to judgment and execution by *B.*, go to *C.* and voluntarily give him a warrant of attorney to confess judgment, on which it is immediately entered and execution levied on the same day on which *B.* would have been entitled to his execution, and had threatened to sue it out, the preference so given by *A.* to *C.* is not unlawful, nor fraudulent within the stat. 13 Eliz. c. 5. 5 Term Rep. 235. *Holbird v. Anderson and an.*

Voluntary confession of a judgment on which execution is immediately issued, is good though another have a judgment and threaten to enter it up.

If a man know of a judgment and execution, and with a view to defeat it, purchase the debtor's goods, it is void, because the purpose is iniquitous. Cited 5 Term Rep 238. Lord Mansfield.

If a man know of a judgment and execution, and with a view to defeat it, purchase good, void.

Lord Mansfield commenting on the stat. 13 Eliz. c. 5. said, if the transaction be not *bona fide*, the circumstance of its being done for a valuable consideration will not alone take it out of the statute. *Ibid.* I have known several cases where persons have given a full price for goods, and where the possession was actually changed, yet being done for the purpose of defeating creditors, the transaction has been held fraudulent, and therefore void. One case was, where there had been a decree in chancery, and a sequestration; a person with knowledge of the decree bought the house and goods belonging to the defendant, and gave a full price for them. The court—The purchase was fraudulent, and therefore void. *Ibid.* 237.

If a man recovers damages against a corporation, he shall not have execution of the goods of the singular men in their natural capacity, but of the goods of the corporation. 8 H. 6. 1. 19 H. 6. 64. 26 H. 6. execution 128. So, if a corporation be fined, shall be levied of the goods of the corporation. 9 H. 6. 36. b.

Corporation goods may be taken.

The property of the goods is vested by the delivery of the *fi. fa.* and an extent afterwards for the king comes too late, and that on the statute of frauds. Comb. 123. For when a judgment is once executed, the goods are *in custodia legis*, and neither ex-

If there is a levy made, and an extent afterwards, comes too late,

chequer process, or assignment from commissioners of bankrupts, will touch them. 3 *Mod.* 236. *Letchmere v. Throwgood.*

Bound at peril to take goods of the defendant.

The sheriff is bound at his peril, to take only the goods of the defendant, for if he take goods of a stranger, he is liable to an action in trover or trespass. *Keb.* 693. Therefore, if he doubts, whether the goods shewn him are the defendant's, he may summon a jury, *de bene esse*, to satisfy himself, whether the goods belong to the defendant or not; this will justify him in returning, that the defendant has no goods within his bailiwick, and mitigates damages in an action of trespass, if the goods seized should not happen to be the defendant's. *Dalt.* 146. *Dougl. Rep.* 40. 4 *Term Rep.* 648. *S. P. Gilb. Ex.* 21.

If inquest taken not evidence.

If such an inquest be taken, it is not admissible evidence in an action of trover brought by the person in whose favour it is found against the sheriff. And *Eyre C. J.* said—Inquests of office are always traversable. In trespass where the sheriff was the real defendant, and not the nominal one, as in the present instance, such an inquisition would perhaps be evidence to lessen the damages by a sort of *argumentum ad hominem*. *Latkow v. Eomer and another*, 2 *H. Black. Rep.* 438.

Sum levied on a corporation.

If a sum is to be levied on a corporation, it may be levied upon the mayor or chief magistrate, or upon any person being a member. *Str.* 367.

The sheriff may return levied, and the goods remain in his hands, for want of buyers.

The sheriff may return on this writ, that the goods remained in his hands for want of buyers, and this return is good, because the sheriff is directed to levy the money from the goods, which implies an authority to sell them; yet, he may not be able to find buyers; and therefore, such return is to be allowed. *Yelv.* 44. *Sid.* 438. 2 *Saund.* 47. *Mod.* 751. *Vent.* 52. but after this return, a *venditioni exponas* may issue; to give the sheriff further power to sell after the first writ is returned, and to oblige him so to do; for, though he may sell after the return, since by the seizure he had the

After such return a venditioni exponas issues.

property

property of the goods in order for sale; yet, he is not obliged to sell without this writ, and therefore it issues out, in order to bring the money into court. *Cow. Rep.* 406.

The sheriff cannot detain the goods on an execution in his own hands, and satisfy the debt of his proper money; but he ought to sell them upon a *venditioni exponas*, and may return on his so doing, that they remain in his hands for want of buyers. For the law requires of sheriffs, a strict execution and observance of the writs directed to them. *Noy* 107. *Lutw.* 589. *Langdon v. Wallis*. Neither are the goods to be delivered to the defendant, but ought to be sold. *2 Vent.* 95.

When the sheriff has by virtue of the *fi. fa.* seized any goods, the property of the goods is altered by the authority of the law; and therefore if a writ of error be brought, and a *superfedeas* issues, it does not hinder the sheriff from proceeding to sell on such execution, and he may do it after such *superfedeas*, which is no more than a restraint from proceeding on that writ, if he has not already proceeded upon it, and is not a writ of restitution to restore the goods, if he has already altered the property; and therefore, if the property is altered, he is at liberty to proceed according to the command of the first writ, since the property was altered by such writ before the *superfedeas*; but if the *superfedeas* had issued *quia improvide because irregularly*; there the defendant should have been restored to the goods, for such *superfedeas* is in the nature of a restitution, for it sets aside the *fieri facias*, because it issued irregularly. If the sheriff has seized goods on the *fi. fa.* though the plaintiff in error has a *superfedeas* afterwards, by which the sheriff is ordered to stop further execution: yet the property of the goods being altered, by the seizure, the sheriff may sell them, and if he does not, the court will award a *venditioni exponas* even though the original record be removed; for upon filing the *fieri facias*, there is a record in

The sheriff cannot detain goods in his own hands, and satisfy the debt, but he ought to sell.

Goods ought not to be delivered to the defendant.

By seizure, the property of the goods is altered; therefore, if error be brought, and a *superfedeas* issues, it does not hinder sale.

But if *superfedeas* issued irregularly, then defendant to be restored.

If the sheriff has seized, though plaintiff in error has a *superfedeas*, yet the property being altered, sheriff may sell.

court sufficient to ground further process upon.
Gilb. Exec. 23.

If sheriff returns,
that he has
goods to the va-
lue of 72*l.*
which remain,
&c. he may sell
them for less.

If the sheriff returns that he has goods to the value of 72*l.* which remain in his hands for want of buyers, it is no estoppel, but that he may sell them for less; for it appearing on the return, that they are not sold, but that they remain in specie in his hands, the value cannot be so set, but that it may be altered between that and the sale, therefore, if on the *venditioni exponas* it appears, that he has sold those goods for less, the plaintiff may have a new execution for his debt. *Cro. Eliz. 598. Cro. Jac. 515. Godb. 276.*

Yet if he values
them so high as
none will buy.

Yet if the sheriff values them so high, as none will buy them at that rate, he must himself. *2 Show. 87. The King v. Bird. Sed qu.*

No app. on *fi. fa.*

It is said, on a *fi. fa.* there need no appraisement, but on an *elegit* there must. *2 Vent. 95. Bealey v. Sampson.*

If sheriff levies
20*l.* of goods and
sells for 40*l.*

If *fi. fa.* be awarded to the sheriff to levy 20*l.* and he sells to the value of 40*l.* and returns the *fi. fa.* with the 20*l.* in court, he may detain the surplusage until demand made of it: for he is not bound to search out the defendant. *Noy 69.* He ought not to take more than will satisfy. *Ibid.*

But if he returns
taken cattle to
the value of
100*l.* and they
die for want,
plaintiff shall
have the value.

But if the sheriff returns that he has taken cattle to the value of 100*l.* and they die afterwards for want of meat, the plaintiff shall have the value from the sheriff, because by the sheriff's own default, it is become impossible, that it should be reduced to any other certainty, than what is mentioned on the return. *Cro. Jac. 515. Godb. 276. Hob. 205, 206. Darv. Abr. 79.*

If he levies tho'
no return, he is
liable to an
action.

Com. Dig.
2 vol. 639.

If the sheriff levies the money upon a *fi. fa.* though he makes no return upon the writ, yet an action of debt, account or *assumpsit* lies against him and his executors; because it is a debt in the sheriff by the levying the money, and the defendant by the sheriff's levying the money upon him, can on a *scire facias* to have execution, plead this in bar, or upon a second *scire facias*, relieve himself by an *audita querela*:

querela: for the lien of the judgment is discharged, by the sheriff's executing the writ, and if the plaintiff had not this action against the sheriff, he would be remediless. *Sir W. Jones* 430. *Rel. Abr.* 598. 921.

If he do return *fieri feci*, the plaintiff may proceed by rule of court, or action of debt founded on his return to recover it. If return of *fieri feci* be made.

An execution being an *intire* thing cannot be superseded after it is once begun: therefore if a writ of execution be executed, *before* a writ of error allowed, or *notice*, it may be returned afterwards; and the utmost length of time the law allows for executing a writ, is the day whereon it is returnable, so long as it is executable, but not executed, the allowance of a writ of error is a *superfedeas*, but not afterwards. *1 Salk.* 321.

But in a late case, where the sheriff entered *after service* of allowance of writ of error, and no bail being put in pursuant to the statute, the court held, the writ of error became an absolute nullity, and was no *superfedeas*. *2 Term Rep.* 45. Error a *superfedeas* if served in time;
But if bail be not put in.

If the sheriff have a *fi. fa.* against a man's goods, and before execution, he pay him the money, in this case he cannot do execution after, and if he do, trespass lies. Nor can he deliver them to the plaintiff in satisfaction of the debt, but he must return to the court, the execution of his writ. *Cra. Eliz.* 504. *Noy* 56. *Dalt.* 529. If defendant pays the sheriff before entry, he cannot enter afterwards.

If upon sale, money remain in the hands of the sheriff *beyond the debt*, the sheriff may keep it till the defendant demands it, and need not deliver it to the defendant *before request*. *Noy* 59. If there remain a surplus after sale.

If goods be once seized and in custody of the law, they cannot be seized again by the same or any other sheriff. *1 Show. Rep.* 174. This must mean *legally seized*; for if any thing happen to *disaffirm* the first seizure, and to shew it was not legal, it is considered as no seizure in law. *4 Term Rep.* 651. *Far v. Newman.* *Lord Kenyon.* If goods once legally seized.

If *A.* lend money on the security of a ship, and take possession *before execution executed*, at the suit of *B.*, the vessel cannot be seized under *B.*'s execution. *Ladbroke v. Crickett*, 2 Term Rep. 649.

If a tender is made of the debt.

If the defendant tenders the debt, it is a wrong for the sheriff to sell the goods. 1 *Keb.* 655.

If sheriff levy and give the money to the plaintiff.

If the sheriff levy the money, and give it to the plaintiff, though he never made any return to the court, it is good enough, 4 *Rep.* 64. for the end of the execution is answered.

Payment on a *fi. fa.* a good plea.

Payment to the sheriff on a *fi. fa.* is a good plea, because he hath authority to levy the debt. 2 *Lev.* 203. *Taylor v. Bekon*, 2 *Jon.* 97. *Skin.* 665. 5 *Mod.* 296.

If he takes goods may sell at any rate, and may sell tho' not deliver to the plaintiff for ready money.

When a sheriff takes goods in execution, he may sell them at any rate, if defendant refuses to pay the debt, *Vent.* 7. and for ready money, because he is immediately charged to the party for whom the sale was. 6 *Mod.* 83. *Morley v. Staker*.

Does not abate by death.

This writ does not abate by the plaintiff's death but the sheriff must go on to execute it. *Mod. Cas. Law and Eq.* 225. *Salk.* 322. 6 *Mod.* 290.

As to time to make return.

7 Term Rep. 377.

Applying for Time.

If the sheriff be called on to return the writ, and the property of the goods disputed, which frequently happens on a commission of bankrupt, &c. he may apply for time to make his return, on bringing the money into court till the right be tried between the contending parties, or one of them has given a sufficient indemnity. 2 *Black. Rep.* 1064. *Semple v. Lord Newhaven*, *M.* 24 *Geo.* 3. *B. R.* and *Hill v. Hocks*, *E.* 26 *Geo.* 3. *B. R.* And the court of king's bench, in the case of *Wells v. Pickman*, upon a suggestion of a reasonable doubt, whether the goods seized under the *fi. fa.* were not covered by an extent afterwards issued at the suit of the crown for malt duties, under the 28 *Geo.* 3.

c. 37. s. 21. enlarged the time for the sheriff to return the writ for the purpose of inducing the plaintiff to go into the court of *exchequer*, and there contest the question of right with the crown, in a more eligible manner than in this court. *Wells v. Pickman*, 7 Term Rep. 174. And Lord Kenyon said, that it was not merely for the sheriff's asking that the court would grant him to make his return, but there must be some reasonable doubt suggested. This is a case in which it may be difficult to decide, whether the goods are bound by the extent, or liable to the plaintiff's execution. It appears that the court of *exchequer* have anxiously endeavoured to put the case in such a situation that all the parties interested may come in and support their respective claims, therefore I think that the sheriff ought not to be put to the difficulty and hazard of deciding in this case, where there is a shorter mode pointed out of determining the rights of all the parties: a decision here will not decide the rights of the crown; whereas by the determination in the *exchequer* all the parties will be bound.

With respect to the King's Debt.

By stat. 33 H. 8. c. 39. s. 74. the king's debt shall be preferred before the suit of any person, and shall have first execution so that his suit be taken and commenced, or process awarded for the debt at the suit of the king *before judgment* be given for the said other person.

King's debt to be preferred to that of the subject.

In *Uppom v. Sumner* it was determined, that if the king's extent be sued out *posterior* to a judgment recovered by the subject, and execution thereon *delivered* to the sheriff, though not executed, the king shall not be preferred. 2 Black. Rep. 1251. Com. Dig. 538.

If extent be *posterior* to a judgment and execution delivered to the sheriff, shall be preferred.

If goods be taken on a *fi. fa.* against the king's debtor, and before they are sold an extent comes at the king's suit grounded on a bond debt tested after the delivery of the *fi. fa.* these goods cannot

But if goods be taken on a *fi. fa.* before extent comes tested after delivery of *fi. fa.* extent too late.

cannot be taken upon the extent. *Rorke v. Dayrell*, 4 Term Rep. 402.

I have always understood it to be clear and settled, that if an extent at the suit of the crown be tested prior to the time when the subject's execution is delivered to the sheriff, the former shall have the preference. *Lord Kenyon, ibid.* 411. But as by the common law, abridged as it is by the statute of frauds, the property of the debtor's goods is bound by the delivery of the writ to the sheriff, there then remains no property in the debtor, on which the prerogative of the crown can attach. Now in this case the sheriff had actually seized the goods under the execution; and an execution once begun, shall proceed; it shall not stop on the issuing of a commission of bankrupt against the debtor; and in this respect, I know of no distinction between the case of the crown and that of a subject. When the king and the subject stand in an equal degree, the former shall prevail. *Ibid.*

An execution once begun shall proceed.

If king and subject stand in equal degree.

For more, see title *Return to Fi. Fa.*

Landlord.

AT common law, executions took place of all debts that were not *specific liens*, even of rents due to landlords; it was thought hard that landlords should not have something like a *specific lien*; to remedy which by Stat. 8 Anne, c. 14, s. 1. it is enacted, "that no goods upon any tenements leased shall be taken by any execution, unless the party at whose suit the execution is sued out, shall, before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for rent for the premises, provided the arrears do not amount to more than one year's rent; and in case the arrears shall exceed one year's rent, then the party at whose suit, &c. paying the landlord or his bailiff one year's rent, may proceed to execute his judgment; and the sheriff is required to levy and pay to the plaintiff,

No goods, &c. shall be taken in execution, unless the party before removal thereof, pay the landlord the rent due.

"tiff, as well the money paid for rent, as the execution money.

"Provided that nothing in the act contained, shall extend to hinder her majesty, her heirs, &c. but that it shall and may be lawful for her majesty, &c. to levy, recover and seize such debts, fines, penalties, and forfeitures, in the same manner as if the act had never been made. *f. 8.*

This statute extends to execution for the defendant as well as the plaintiff. *2 Wilson 140. Henshall v. Kimpson.* And it has been determined that the executor of a landlord should have the benefit of this act, as well as the landlord himself, for it is an interest vested. *Fortesc. Rep. 359, 360. Str. 214.* So also an administrator. *Str. 212.* But where goods were taken, and the money levied before administration taken out, it was held, that as the execution was executed, he came too late, *Str. 97. Fortesc. Rep. 460.* This means that the goods were actually sold. But *Powis, Justice*, seemed to be of opinion to the contrary, who held, that the administration should have relation to the death of the intestate; because, by the ecclesiastical law it is not to be granted within 14 days of an intestate's death; which the other justices denied, and said, that relations being fictitious ought not to hold place against the right of strangers. *Gilb. Eq. Rep. 223, 224. 11 Vin. 133. pl. 29.*

The landlord's rent must be paid without deduction of poundage or expences. *Str. 643.*

A ground landlord of an house, in which an under-lessee dwelt, and against whom an execution was sued, is not within the statute, which extends only to the immediate landlord. *2 Str. 787.*

As the landlord is entitled to one year's rent, he therefore is bound to give notice to the sheriff of its being due, for the sheriff is not bound to retain without, nor to know who the landlord is, or what rent in arrear without such notice, and an action will not lie without such notice. *1 Str. 97. Waring v. Dewberry.*

Provide not to hinder the queen to levy any debts due to the crown or fines.

Executors and administrators within the act.

Must be paid without deduction.

A ground landlord not within the act.

Landlord must give notice to the sheriff of rent due.

After

When there are two executions, landlord cannot have a year's rent on each.

After the landlord had a year's rent paid out of the execution money according to the statute, there came another execution, and another year's rent demanded, held, that the intent of the act was, to continue a lien as to one year, and to punish him for his laches, if he let more run in arrear. 2 *Str.* 1024 and 219.

Not entitled under a commission.

A commission of bankrupt is not considered as an execution; and as the landlord, on the one hand, may distrain for his whole rent after assignment and sale before the goods are removed off, so on the other hand, if he suffer the goods to be removed without distraining, he must come in *pro rata* with the other creditors. 1 *Atk.* 103.

Landlord not entitled to rent on an extent, altho' he distrain previous to the entry, for no property is altered.

If an extent comes in, the landlord cannot claim his rent although distress taken the day before. *Bunb.* 269. *pl.* 345. So on extent or an outlawry, although he had distrained three days previous to the entry and motion to be paid under stat. 8 *Ann.* denied. *Bunb.* 5. *pl.* 5. If a distress be taken 29 *October*, and an extent dated 4 *November*, and corn, &c. seized, the landlord cannot have his rent, for no property was divested by the distress, and they were in the landlord's hands by way of pledge. *Bunb.* 42. *Vent.* 37. 2 *Saund.* 47. but an attachment was refused, although a contempt to oppose the extent.

An immediate extent prevails against the landlord's distress, tho' taken before extent entered.

An immediate extent against the king's debtor, telled *after* a distress taken for rent justly due to the landlord, with notice to the tenant being the king's debtor, and appraisement of the goods and chattels, but before sale, shall prevail against the distress. *The King against Cotton, Esq.* *Parker's Rep.* 112.

Landlord's remedy.

If notice has been given to the sheriff, of the rent being in arrear, and he will not pay, the landlord may move the court to have the same paid out of the money levied, or he may bring an action. 2 *Wils.* 140. *Henchett v. Kimpson.* 1 *Str.* 212. *Palgrave v. Windham.*

If

If the goods seized be not sold or removed by the sheriff, so as to transfer the property therein, but defendant pays the debt and costs, though the landlord has given notice and demanded the rent, yet he is not entitled in such case. *Sellon's Praes.* 489.

A bill of sale was made by the sheriff, this was held to be a removal of the goods taken by *fi. fa.*

West v. Hedges, *Barn.* 211.

In several cases a distinction has been taken between proceedings at the suit and for the benefit of the crown, *Bunb.* 194. *ib.* 5. 109. and an outlawry in a civil suit; and in the latter instance it was ruled that "the landlord ought to be satisfied a year's rent, because a *capias utlagatum*, at the suit of the party, is to be considered only as a private execution." *Lawrence J.* 7 *Term Rep.* 264. *St. John's College v. Marcott*.

But if the outlawry be reversed, it would have been contrary. *Ibid.*

Of the old Sheriff's Authority.

The old sheriff may sell by virtue of the *fi. fa.* after he is out of office, and without a *venditioni exponas*; *Saund.* 164. 165. for by the seizure he is answerable for the value of the goods to the parties; though if he returns, that they be upon his hands for want of buyers, this is a good return; but if he does not sell them, there shall issue a *distringas* to the new sheriff, to distrain the old one to sell and bring in the money to the new sheriff, so that he may have it ready. 6 *Mod.* 299. *Salk.* 323. 2 *Lord Raym.* 1074. But no *venditioni exponas* goes to the old sheriff, because he ceases to be an officer of the court. *Godb.* 276. (a)

Vide title Preceding and succeeding Sheriff.

(a) But in 2 *Saund.* 343. it is stated that a venditioni exponas may issue directed to the new sheriff where the old one returns that

If not sold.

Bill of sale made, held to be a removal.

As to rent on a *capias utlagatum*.

Old sheriff may if he take goods on *fi. fa.* sell without a *venditioni exponas*, if not to be distrained.

*In what Cases after Sale, Restitution
shall be.*

No remedy for
sale under value,
unless, &c.

If sheriff sells a
term, and judg-
ment reversed,
party to have
the money.

If sold for 100l.
and worth 1000l.
shall have the
100l. only.

Where an ac-
count was order-
ed, and a recon-
veyance.

NO remedy lies against the sheriff for the sale under value, unless it be by covin. *Kilw.*

64. pl. 2.

If the sheriff sells the term by virtue of a *fi. fa.* and the judgment is reversed by writ of error, the defendant shall not be restored to the thing in specie, but in money for which it is sold; for the *fi. fa.* gave the sheriff authority to levy the money *de bonis*, of the goods, so that he was obliged to turn the goods of the defendant into money, and therefore, the restitution must be of what the execution had taken from him, which was money; and not of the term itself, for then nobody would buy; and, therefore a stranger's interest, which comes to the term by due course of law, cannot be affected by reversion of a judgment between the parties to which he is in no-wise privy, provided the sale be without fraud. *Mod.* 573. pl. 788.

Sale of a term upon an execution by a sheriff for 100l. to a stranger, though it was worth 1000l. yet upon reversal he shall not have the term again, but 100l. only. *Yelv.* 180. *Goodyer v. Junca*, *Cro. Jac.* 246. 2 *Vern.* 314, 315. pl. 302. *Peyton v. Ayliffe*. *Vide* 3 *Chan. Rep.* 32. *Gaseigne v. Stur*, where a bill was brought to vacate a judgment where a lease was extended and sold by the sheriff to one *Parker*, in trust for the defendant, the conferee of the judgment, and to have the bill of sale set aside, and an account of the profits, also a writ of restitution of the possession, the lease being of greater value than extended at. And upon hearing, a decree was made to account and reconvey.

that he has taken goods which remain in his hands for want of buyers. It is usual for the sheriff to make a bill of sale to the plaintiff's friend for the amount of the appraisement; but the plaintiff cannot compel the sheriff to do, though he make a promise. *Crow. Rep.* 403.

Where

Where the plaintiff has execution and the money is levied and paid, and the judgment is afterwards *reversed*, there, because it appears on the record that the money is paid, the party shall have restitution *without a scire facias*; otherwise where it was levied, but not paid, for then there must be a *scire facias* suggesting the matter of fact, viz. the sum levied, &c. *Tidd* 749. (a) But where judgment is set aside after execution for irregularity, there needs no *sci. fa.* for restitution, but an attachment shall be granted upon the rule for contempt, if there be not a restitution; *2 Salk.* 588. *Tidd* 750. provided such rule orders the money or goods to be restored.

Levari facias.

A Third species of execution is by writ of *levari facias*; which affects a man's goods and the profits of his lands, by commanding the sheriff to levy the plaintiff's debt on the lands and goods of the defendant, whereby the sheriff may seize all his goods, and receive the rents and profits of his land, till satisfaction be made to the plaintiff. It is said, that the sheriff may not only sell the goods, but also collect the debts out of the profits of the land, as corn or grass growing thereon, yet, in neither case, hath he authority to meddle with the debtor's lands, so as to sell or deliver such lands, to the creditor, in satisfaction of his debt. *3 Co.* 11. *Co. Lit.* 290. *b.* 2 *Inst.* 450. *Plowd.* 441. *Camb.* 470. Little use is now made of this writ; the remedy by *elegit*, which takes possession of the lands themselves, being much more effectual. It was the most ancient judicial process of the law, though it now continues only in three cases, in the county and manor court, recognizances in chancery, and a recovery against the heir on the lands of his ancestor by descent.

(a) Why not an action against the sheriff for money had and received.

Levari facias affects a man's goods and profits of the land.
Dalt. 144.

May not only sell the goods, but collect all the debts out of the profits of the land as corn and grass growing, &c.

Little use is now made of this writ.

The most ancient in the law.

Now used where
sheriff returns a
beneficed clerk.

Bract. 440. *F. N. B.* 265, 266. *Reg.* 300.
Except that it is now used, where the sheriff on a *fi. fa.* returns that an ecclesiastic is a beneficed clerk, not having any lay fee. On the return, this writ of *levari* or *fieri facias* goes to the bishop of the diocese, wherein the benefice is, commanding him to levy the sum recovered of the ecclesiastical goods, &c. which are not to be touched by lay hands; and thereupon the bishop sends out a sequestration of the profits of the clerk's benefice, directed to the church-wardens, to collect the same; and pay them to the plaintiff, till the sum be raised. 2 *Burn. Eccl. Law* 339.

Bishop may
name sequestra-
tors, or the par-
ty.

The bishop may name the sequestrators himself, or may grant the sequestration to such persons as shall be named by the party who obtained the writ. If the sequestration be laid, and before the return of the writ; the mean profits may be taken by virtue of the sequestration after the writ is made returnable, otherwise not. 3 *Burn. Eccl. Law* 317.

Sequestration to
be duly publish-
ed.

The sequestration shall be forthwith duly published, by reading it in the church during divine service, and afterwards at the church door, and fixing a copy thereon; for where a sequestration was made out, and not published while the writ was in force, but was stayed in the register's hands, by the desire of the plaintiff's attorney, the court held, that it had no priority, as against other sequestrations, afterwards made out and duly published; but that if it had been published, the execution would have taken effect, and must have been first satisfied, notwithstanding it was then returnable. *Legassick v. Bishop of Exeter*, 1 *Crompt.* 359. *B.* 22 *Geo.* 3. *K. B.*

Otherwise it has
no priority.

It issues out of
the exchequer to
levy debts due to
the king.

This writ also issues out of the exchequer, to levy debts due to his majesty, and the goods seized; as well as the lands, are to be appraised, and delivered over to the party, according to the appraisement. See stat. 3 *Geo.* 1. c. 15. s. 3. for poundage.

It

It is said upon a *levari facias* to levy the yearly value of 55 *l.* found by inquisition on an outlawry upon a judgment in debt, the beasts of a stranger *levant & couchant* on the land may be taken, for they are the issues of the land, 1 *Salk.* 395. and were it otherwise, it would be in the power of the party, by agisting his lands, to defeat the king of the benefit of the outlawry. 1 *Salk.* 395. 5 *Mod.* 112. *Carth.* 441. *Skin.* 617. *Comb.* 434. 469. But not on a *fi. fa.* for the Queen's debt. *Cr.* *Eliz.* 431. 1 *Rol. Abr.* 159. *Hard.* 101.

The beasts of a stranger, *levant* and *couchant*, may be taken after outlawry.

Though one be in execution for the king, yet a *levari facias* lies *de bonis & ca:allis* and by such writ, the sheriff may take ready money. 2 *Show.* 166.

Elegit.

THE fourth species of execution is by an *elegit*; which is a judicial writ, given by the statute 13 *Ed. 1. c.* 18. either upon a judgment for a debt, or damages; or upon the forfeiture of a recognizance, taken in the king's court. By the common law, a man could only have satisfaction of goods, chattels, and the present profits of lands, by the two last-mentioned writs of *feri facias*, or *levari facias*; but not the possession of the lands themselves; which was a natural consequence of the feudal principles, which prohibited the alienation, and of course the incumbering of the fief with the debts of the owner. And when the restriction of the alienation began to wear away, the consequence still continued; and no creditor could take the possession of lands, but only levy the growing profits: so that, if the defendant aliened his lands, the plaintiff was ousted of his remedy. The statute granted this writ (called an *elegit*, because it is in the *choice* or *election* of the plaintiff, whether he will sue out this writ, or one of the former) by which the defendant's goods and chattels are not sold, but only appraised; and all of them (*except oxen and beasts of the plough*) are delivered to the plaintiff, at such reasonable appraisement

Elegit.

By the common law a man could have only satisfaction of goods, &c. and not possession of the land.

The statute granted this writ, 13 *Ed. 1. c.* 18.

ment

If goods not sufficient, then a moiety of the land.

Until this statute lands were not liable to debts, nor are copyhold lands now liable, unless a debt due to the king. Because he is the grand superior lord of all estates.

After *elegit* cannot take the body, if there are lands extended. If no land then a *ca. sa.* may be had.

Body and goods may be taken, but not body and land too.

He that recovers a debt, may have a *fi. fa.* or *elegit*.

ment and price, in part of satisfaction of his debt. If the goods are not sufficient, then the moiety or one half of his freehold lands, which he had at the time of the judgment given; 2 *Inst.* 395. whether held in his own name or by any other in trust for him, are also to be delivered to the plaintiff; to hold out of the rents and profits thereof, the debt to be levied, or till the defendant's interest be expired: as till the death of the defendant, if he be tenant for life, or in tail. Copyhold lands, are not liable to be taken in execution upon a judgment. 1 *Rel. Abr.* 888. But in case of a debt to the king, it appears by *Magna Charta*, c. 8. that it was allowed by the common law, for him to take possession of the lands, till the debt was paid. For he, being the grand superior and ultimate proprietor of all landed estates, might seize the lands into his own hands, if any thing was owing from the vassal; and could not be said to be defrauded of his services, when the ouster of the vassal proceeded from his own command. This execution, or seizing of lands by *elegit*, is of so high a nature, that after it, the body of the defendant cannot be taken; but if execution can only be had of the goods, because there are no lands, and such goods are not sufficient to pay the debt, a *capias ad satisfaciendum* may then be had after the *elegit*; for such *elegit* is in this case, no more in effect, than a *fieri facias*, *Hob.* 58. So that body and goods may be taken in execution, or land and goods; but not body and land too, upon any judgment between subject and subject, in the course of the common law. The election cannot be complete, unless the plaintiff has some benefit from the land. 1 *Str.* 226.

The statute ordains. "that where a debt is recovered or acknowledged in the king's court, or damages awarded, it shall be in the election of him that sueth to have a *fieri facias* unto the sheriff to levy the debt upon the lands and chattels of the debtor, or that the sheriff shall deliver to him all the chattels of the debtor (saving his

" his oxen and beasts of his plough) and the one
 " half of the land, until the debt be levied upon
 " a reasonable extent; and if he be put out of
 " the land, he shall recover it again by writ of
 " *novel seisin*, and after that by writ of *re-dissei-*
 " *sin*, if need be." 13 *Bd.* 1. c. 18.

By force of this writ, the sheriff may take in execution and deliver unto the party plaintiff, the one half of all the lands, tenements and rents of the debtor, at a reasonable extent, and all his goods and chattels, (*except his oxen and beasts of his plough,*) until the debt be levied upon a reasonable price or extent. 3 *Co.* 12. (a)

Sheriff may take in execution and deliver one moiety of all lands.

By this writ two things are to be done.

1st, *The goods and chattels of the defendant, are delivered to the plaintiff.* Two things to be observed.

2d, *The moiety of the lands and tenements.*

And this must be done by inquest taken by the sheriff; for the valuation of the goods and lands ought to be first found by the inquisition of a jury, and the goods and chattels are delivered by reasonable price, as the lands are by reasonable extent; but terms for years which are chattels real, and an interest out of lands and tenements, may be delivered as chattel by reasonable price, or as profit out of lands by reasonable extent, and hence, if a term for years be extended and valued, at a certain value in gross, and delivered, and the debt is more than levied out of the profits of other lands, and of the term, yet he shall not account for the profits of the term, nor deliver up the same, because he had it at a stated price by the *elegit*, and the lands and tenements were only for the remainder of the debt, and therefore the profit of them will only go towards satisfying such remainder; and for these last profits only, the plaintiff shall be answerable; *Cro. Eliz.* 584. *Hob.* 58.

Must be done by inquest.

therefore some of the books say, that a chattel or term for years may be sold, which is true in one sense, *viz.* that they may be sold to the plaintiff, for the price settled by the jury, and if the de-

Terms for years, and interest out of lands, may be delivered as a chattel by reasonable price.

Some of the books say, a chattel or term for years may be sold.

defendant tenders the money to the sheriff before delivery, or to the court before the actual delivery by the sheriff, such goods are saved; and if afterwards delivered, he shall be entitled to his *audita querela*. *Moor* 873. *pl.* 1216. but if there is no tender made, the property of the goods are altered by the delivery of the sheriff, and the plaintiff may dispose of them under the judgment.

The *elegit* as to goods not a *fi. fa.*

Sheriff and jury may go to the house, &c. and value.

The *elegit* as to goods, is not a *fieri facias*, for a *fi. fa.* is executed by sale, but the *elegit* by appraisement of the jury and delivered to the party. 1 *Sid.* 104. 1 *Lev.* 92. 1 *Keb.* 105. And the sheriff and jury may go to the house or ground to be extended, or where the goods are, and there appraise and value the same. 5 *Co.* 91. They may go into the same house or ground for that purpose, *if the doors or gates be open*, but may not break open the gates or doors. *Dalt.* 134.

Extent and valuation must be by 12 men.

Bailiff of a liberty may execute this writ.

The extent and valuation of the lands, and the appraising of the goods, must be by an inquest by the oath of 12 honest and lawful men, and not by the sheriff himself. 4 *Co.* 74. 2 *Bulstr.* 97. 4 *Rep.* 65. (a). And a bailiff of a liberty, may execute them, within the equity of the statute; that is, such a bailiff as has the execution and return of writs. *Cro. Car.* 319. and he may deliver the moieties.

Sheriff is to impanel a jury to inquire of the goods, and also lands.

Upon an *elegit* the sheriff is to impanel a jury, who are to make inquiry of all the goods and chattels of the debtor, and to appraise the same; and also to inquire as to his lands and tenements; and upon such inquisition the sheriff is to deliver all the goods and chattels, (*except oxen and beasts of the plough*), and a moiety of the lands, to the party, and return his writ, in order to record his inquisition in that court, out of which the *elegit* issued.

Cannot be done without inquest.

For it cannot be done by the sheriff without an inquest, because the words of the statute are by *reasonable price and extent*, which must be found such, by the oaths of 12 men. 2 *Inst.* 396. *Co. Lit.* 38). *Dyer* 100. 5 *Co.* 74.

No

No notice is given of executing an *elegit*.

Although the creditor takes out an *elegit*, yet if it appears to the sheriff, that there are goods and chattels sufficient of the debtor's, to satisfy the debt, he ought not to extend the lands. 3 *Inst.*

395.

When the jury have found the seisin, and value of the land, the sheriff, and not the jury, is to set out and deliver a moiety thereof to the plaintiff by *metes and bounds*. *Ibid.* But the jury need not divide it. *Cro. Car.* 319.

The sheriff is not bound to deliver a moiety of each particular tenement and farm; but only certain tenements making in value a moiety of the whole. *Salk.* 563. 1 *Sid.* 91. *Cro. Car.* 319. It is agreed, that the moiety extended must be set out by *metes and bounds*. *Den v. Earl of Abingdon, Dougl.* 473. *Dalt.* 135. *S. P.*

The inquisition ought to find the lands with certainty, and ought to show the place and county where the inquisition is taken, and where the lands lie. *Dyer.* 208. *b. (a)* If no lands are returned, the sheriff need not return an inquisition. *Str.* 874. The sheriff on the inquisition shall deliver the moiety, described with certainty. 1 *Vent.* 259. described by *metes and bounds*. *Hutt.* 16. distinctly, 1 *Brownl.* 38. He ought to deliver a moiety only; for if he delivers more, it will be void for the whole. 1 *Sid.* 91. 239. And if the defendant be joint-tenant, or tenant in common, it ought to be specially mentioned in the return. *Hut.* 16. *Brownl.* 38. If there are divers co-tenants, a moiety of the lands of all. 2 *Inst.* 396.

If the defendant has aliened after judgment, a moiety of the land in the hands of the purchaser, as well as of the defendant. *Ibid.*

If the lands lie in several *vills*, a moiety of the land in all, and not the whole in one *vill*. 1 *Lev.* 160.

(a) Describing the lands with convenient certainty. *Moor.* 2. *Com. Dig.* title *Execution*, (C. 14.)

To deliver one half of all houses, lands, &c.

The sheriff is to deliver one half of all houses, lands, meadows, and pastures, rents, reversions, and hereditaments wherein the defendant had any sole estate in fee, or for life, into whose hands the same do afterwards come; but not of a right only to land, an annuity, copyhold lands, &c. *Dyer* 206. 7 *Rep.* 49. *Plowd.* 224. *Stat.* 13 *Ed.* 1. c. 18.

Sale or extent of a lease.

On inquisition of a lease, which is but a chattel, the sheriff may sell it as goods, but if he extends it, there shall be no other benefit than as of a common extent. 1 *Brownl.* 38.

If extended.

If it be extended, the plaintiff is accountable for all the profits he receives out of the term, upon such extent; and if he receive the debt out of such term, before it expires, the defendant shall be restored to the term itself, *Gilb. Exec.* 35. 5 *Co.* 706. 896. *Leon.* 96. but otherwise he shall keep the term, and not account for the profits of it, *ib.* 33.

Actual possession cannot be delivered.

Actual possession cannot be delivered on an *elegit*, for the sheriff ought only to deliver seizure, to enable the plaintiff to maintain an ejectment, and the tenant may plead thereto, otherwise the tenant would be turned out unheard and be remediless. 3 *Kebl.* 243. 2 *Eq. Caf. Abr.* 381. 3 *Term Rep.* 295.

What Estates may be extended.

What estates are extendable.

A term for years; 2 *Inst.* 396. Lands which defendant has by extent, upon a statute-merchant, &c. 1 *Roll.* 887. l. 12. 3 *Lev.* 113. *Mod.* 36. So all tenements, as well as land of the defendant, as a rent, &c. *Bro. Elegg.* 13. *Mod.* 32. in ancient demesne, 5 *Co.* 105. *Gilb. Exec.* 40. So two thirds of a rent may be extended, though the defendant has the whole. *Cro. Eliz.* 742. Lands before in execution upon a statute. 4 *Co.* 65. b. So now by stat. 25 *Car.* 2. c. 3. s. 10. "it shall be lawful for every sheriff or other officer, to whom

Lands liable freed from incumbrances of cessui que trust.

“whom any writ or precept shall be directed, upon any judgment, statute, or recognizance, to do execution of all such land, tithes and hereditaments, as any other persons be seised or possessed in trust for him against whom execution is sued; as if the party against whom execution shall be sued, had been seised of such lands, &c. of such estate as they be seised of in trust for him at the time of the execution sued, which lands, &c. shall be accordingly held, freed from all incumbrances of such persons seised or possessed in trust.”

What cannot be extended.

But upon an *elegit*, the sheriff cannot extend a copyhold. 1 *Rel.* 888. l. 1. because the freehold is in the lord. Nor a term for years of a copyhold made by the licence of the lord. *Ibid.* l. 3. Nor lands of which the defendant is disseised, whilst they are in possession of the disseisor. *Ibid.* l. 7. Nor since the statute 29 *Car.* 2. lands which the trustee has aliened before execution: for they are not bound by the judgment. *Comyns* 227. Nor the land of a villein upon an *elegit* against the lord; for, it is the land of the villein, till the lord seises it. *Ibid.* l. 20. Nor a tenement which cannot be granted over: as the office of filazer; for it is an office of trust. *Dy.* 7. 6. So a bare rent-seck cannot be extended, *Cro. Eliz.* 66. nor does it lie of the glebe land of a parson or vicar, no more than of a church-yard, for these are each *solum deo consecratum*. *Jenk.* 207. An *advowson* in gross cannot be extended on an *elegit*, because a moiety cannot be set out by the sheriff, nor can it be valued at any certain rent towards payment of the rent. *Gilb. Exec.* 39.

Entailed lands in the hands of the heir are not extendible, neither by *statute*, nor *elegit*. *Cro. Jac.* 85.

Entailed lands in the hands of the heir.

Propriety of judgments.

A. had judgment against *J. S.* in debt 3 *fac.*, and *B.* had judgment in debt against *J. S.* 4 *fac.*, *A.* 10 *fac.* had an *elegit*, and the sheriff delivered a moiety of the lands, but did not return his writ: and thereupon, *B.* endeavoured to have an *elegit* upon his judgment, and to turn *A.* out of possession; but *per Coke*—If *B.* should turn *J. S.* out of possession, *A.* may have a new *elegit*, because his judgment is prior to the other. *Rel. Rep.* 77. *pl.* 18. *Brete v. Foster.*

An *elegit* executed after a claim by extent, the judgment a better title.

An *elegit* executed, and a claim by extent on a statute acknowledged in the same term, but before the judgment was given. The reporter says, he heard that it was adjudged, that the plaintiff had the better title, being in possession under a judgment. *Latch* 53. *Gerrard v. Norris.*

If a *fi. fa.* and *elegit*.

If a *fi. fa.* and *elegit* be delivered at same time, with an extent at a common person's suit, the *fi. fa.* and *elegit* shall take place, because the goods shall be attendant to satisfy, in the first place, the judgment of the superior court. *Brook.* 97.

If the land be first executed on a statute, and after *elegit*, obtained before acknowledgment of the statute.

If the land be first executed upon a statute, and afterwards an *elegit* upon a judgment obtained before the acknowledging of the statute come also to the sheriff, the moiety of the land extended, shall be delivered to the plaintiff upon the judgment. *Brownl.* 38.

How to deliver, where there are two manors.

Elegit issued against him who had two manors, the sheriff may deliver the one manor to the plaintiff, in the name of the moiety of all, and is not bound to deliver the moiety of every manor. *Br. Elegit, pl.* 14. So, of two acres, and this seems to be where they are of equal value. *Ibid.*

So of two acres.

If Judgment be reversed.

If error brought, and judgment reversed; the goods in specie to be restored, and not the value.

If a writ of error be brought, and the judgment reversed, the goods in *specie* shall be restored, and not the value, but upon a *fieri facias*, the value and not the goods in *specie*; and the reason of the difference is, that on the *fieri facias*, the sheriff is

to sell to any buyer, but in the *elegit*, he is only to deliver it to the plaintiff; therefore, when the writ of error has reversed the judgment in the one case, the defendant is restored to the money, in the other, to the goods themselves; for he is to be restored to what he has lost by the writ as it was awarded, which, in the case of a *fieri facias*, was the money, but in the *elegit*, the goods themselves delivered over to the plaintiff. *Rel. Abr.* 778. *Godb.* 27. *2 Lev.* 92. *pl.* 115. *5 Co.* 90. *Moor* 573. *pl.* 788. *Yelv.* 179. *Cro. Jac.* 246, 247.

Two persons recovered severally against one in debt, he who had the first judgment sued first an *elegit*, and had the moiety of the land delivered in execution, after the other sued the *elegit*; and the sheriff prayed the advice of the court. *Per cur.*—He shall deliver the moiety of that moiety, which he had at the time of the writ awarded. *Cro. Eliz.* 482. *Dalt.* 532. Yet, if both judgments are of the same term, each may take a moiety of the whole.

On the second *elegit*, the sheriff can only deliver a moiety of the moiety left.

The sheriff cannot deliver a lease upon an *elegit* at another value than what the jury had found it at; and the sale made by him is as good as if made in market overt. *Brownl.* 38, 39.

Cannot deliver a lease at another value than what it found.

After Inquisition taken.

After the inquisition is taken by the sheriff, it shall be returned and filed. *Dyer* 100. And after it is filed, it shall not be avoided upon surmise, that more is extended than a moiety. *2 Inst.* 396. Or, that it was extended at a small value. *2 Cha. Ca.* 183. And though the extent was at an under-value, the plaintiff shall account only for the value at which the extent is. *Ibid.* 183.

After inquisition taken, it is to be filed.

But before the inquisition filed, the court may examine it; and if they find fraud, partiality, &c. may stop the filing, and award a new *elegit*. *2 Inst.* 396.

But before inquisition filed, court may examine it, and stop filing.

Sheriff's Charge to the Jury.

Charge to the jury.

" Your charge is to inquire what goods and
 " chattels, (except the oxen and beasts of the
 " plough,) and also, what lands and tenements
 " C. D. hath or had, or is or was seised of, in
 " the bailiwick of the sheriff of *Oxford*, on the
 " 23d day of *October*, in the 39th year of his
 " majesty's reign, or any time since: and also to
 " inquire and say, what is one moiety of all the
 " said lands and tenements, that the same may at
 " a reasonable price and extent be made to be de-
 " livered to *A. B.* to hold as his own proper
 " goods and chattels: and also to hold the said
 " moiety of the said lands and tenements to the
 " said *A. B.* and his assigns, as his free tenements,
 " according to the form of the statute," &c.

Sheriff's Fees.

AT common law no fees whatever were allowed to sheriffs; *vide* 10 *Mod.* 139. But this, instead of being advantageous to the subject, proved only oppressive; and opened the door to extortion: therefore the legislature found it necessary to interfere, and regulate the demands of sheriffs, by appointing certain fixed sums to be taken in cases of execution.

The sheriff not to receive more than 12 d. for every 20s. where the sum does not exceed above 100 l., and 6 d. for every 20 s. above that sum.

By the statute of 28 *Eliz. cap. 4.* it is enacted,
 " That it shall not be lawful to, or for any sheriff,
 " under-sheriff, bailiff of franchises or liberties,
 " nor for any of their or either of their officers,
 " ministers, servants, bailiffs, or deputies; nor for
 " any of them, by reason or color of their or
 " either of their office, or offices, to have, receive,
 " or take, of any person or persons whatsoever,
 " directly or indirectly, for the serving and exe-
 " cuting of any extent or execution upon the body,
 " lands, goods, or chattels, of any person or persons
 " whatsoever,

" whatsoever, more or other consideration or re-
 " compence, than in this present act is, and shall
 " be limited and appointed, which shall be law-
 " ful to be had, received, and taken; (that is to
 " say) twelve-pence of and for every twenty shil-
 " lings, where the sum exceedeth not 100*l.* and
 " six pence of and for every 20*s.* being over and
 " above the said sum of 100*l.* that he or they shall
 " so levy or extend, and *deliver in execution*, or
 " take the body in execution for, by virtue and
 " force of any such extent of execution whatso-
 " ever: upon pain and penalty that all and every
 " sheriff, under-sheriff, bailiff of franchises and
 " liberties, their and every of their ministers, ser-
 " vants, officers, bailiffs or deputies, which at any
 " time shall directly or indirectly do the contrary,
 " shall lose and forfeit to the party grieved his
 " treble damages, and shall forfeit the sum of 40*l.*
 " for every time that he, they, or any of them
 " shall do the contrary; the one moiety thereof,
 " to our sovereign lady the queen, her heirs
 " and successors; and the other moiety thereof to
 " the party or parties that will sue for the same,
 " by any plaint, action, suit, bill, or information,
 " wherein no essoin, wager of law, or protection
 " shall be allowed.

" Provided always, that this act, or any thing
 " therein contained, shall not extend to any fees
 " to be taken or had for any execution, within any
 " city or town corporate."

Not to extend to
 executions with-
 in any city.

In the construction of this statute, the following
 points have been holden.

1st, That though the words of the statute are,
 that it shall not be lawful for the sheriff to take any
 more, or greater fee, than by the act is limited,
 &c. that herein by implication at least, if not by
 express words, a right is given the sheriff to de-
 mand those fees mentioned in the statute: and con-
 sequently that he may, as in all cases where a sta-
 tute creates a debt or duty, maintain an action of
 debt for them. *Moor* 853. *pl.* 1166. *Probyn* and

A right is given
 to the sheriff, to
 demand the fees,
 mentioned in the
 act, and he may
 bring debt for
 them.

Lumley

Lumley adjudged. *Latch* 19. *Poph.* 175. *Palm.* 400. *Salk.* 331.

That he shall have 1 s. for the first 100 l., and 6 d. for every other 100 l.

2d, It hath been adjudged that the sheriff shall have 12 d. for every 20 s. of the first 100 l., and 6 d. for every 20 s. for the residue. *Cro. Eliz.* 335. *Cro. Car.* 286. *Lister v. Bromley.*

That the proviso shall not extend to any fees taken for execution, within any city, and on judgments in those courts only.

3d, It hath been resolved, on the proviso of the said statute, that it shall not extend to any fees to be taken for any execution within any city or town corporate; that this must be intended of executions on judgments given in those courts: and that therefore where a sheriff executes a judgment given in *Westminster-Hall*, in a city or town corporate, he is as much entitled to his fees, pursuant to this statute, as if the execution had been done in any part of the county at large; for herein the sheriff runs as great a risque, and his trouble is as great: but where both the judgment and execution are within a limited jurisdiction, it cannot be presumed to be attended with equal difficulty; and therefore the proviso in the statute excludes them. *Latch* 17, 18. *Poph.* 173. *Palm.* 399, 400. *Dalt.* 527. *Cro. Eliz.* 263. 5 *Mod.* 97. *Salk.* 331.

Bailiff of a liberty who executes an execution, entitled to the fees.

4th, It hath been resolved, that the bailiff of a liberty, who executes an execution on a judgment given in *Westminster-Hall*, is entitled to the fees, within the words and meaning of the statute: and not the sheriff of the county, who directs his precept to him. *Latch* 19. 52. *Salk.* 331. pl. 4. *Dalt.* 526.

5th, It seems agreed, that if a sheriff makes an extent and before the *liberate*, a new sheriff is chosen, the new sheriff shall have the fees appointed by the statute. *Winch* 50, 51. *Dalt.* 526.

Statute does not extend to real executions; but to executions in personal actions. Nor on statute-merchants, &c.

6th, It hath been resolved, that the statute does not extend to real executions, such as *habere facias seisinam*, or *possessionem*, but only to executions in personal actions: also it is said, that the statute does not extend to executions upon statute-merchants, recognizances, &c. and that the act is to be understood of cases where the judgment *redditur* in

in invitum, and not by the voluntary confession of the party. But *quare?* Salk. 331.

7th, That for executing a *capias utlagatum*, or for a warrant to execute it, or for a return of it, no fee is due to the sheriff, because this is at the suit of the king. *Het. 52. 2 Brownl. 283.*

8th, It has been resolved, that if one in execution die, and a *feri facias* issue against his goods, the sheriff shall have his fees upon executing the *feri facias*, for his trouble was as great as at the first. Salk. 331. pl. 6.

In the printed statute this is called 29 *Eliz.* but by the parliament roll it is the 28th, and so ought to be recited. Salk. 331. pl. 4. *Skin. 363. pl. 7. (a)*

It is extortion for an officer to take his fee before it is due; and therefore, where an under-sheriff refused to execute a *capias ad satisfaciendum*, till he had his fees, the court held, that the plaintiff might bring an action against him for not doing his duty, or might pay him his fees, and then indict him for extortion. *Co. Litt. 368. Salk. 330. pl. 3. 335. pl. 5.*

An action of debt was brought by the sheriff of *Cambridgeshire* upon the 29th *Eliz. c. 4.* for his fees for executing an *elegit*; and upon *nil debet* pleaded, there was a verdict for the plaintiff.

Holt, Chief Justice, said, that there was no reason why the sheriff should not have fees, as well for executing an *elegit*, as an extent upon a statute. Upon the writ of *elegit*, the sheriff returns, that he has taken an inquisition, and extended the defendant's land, and delivered it to the plaintiff. And there is a *liberate* in the body of the writ of *elegit*; otherwise, in case of an extent upon a statute, there must be a *liberate*. And in case of the *elegit*, upon the return of delivery, the plaintiff may enter; and he can do no more, in case of a statute after a *liberate* executed, for he must not enter by force. The return of *liberari feci* is a

(a) 2 Term Rep. K. B. 148. It is brought as upon the 29 *Eliz.* and held well. 2 Black, Rep. 1103.

No fee due on executing a *capias utlagatum* by this act.

On a ca. fa. sheriff to have his fees for the whole debt, vide 2 Geo. 1. c. 15. l. 17.

Statute is called 29 *Eliz.* but is 28 *Eliz.*

Extortion, what.

Debt brought for fees for executing an *elegit*, verdict for plaintiff.

Holt C. J. there was no reason why he should not have fees for an *elegit*.

There is a *liberate* in the extent on.

Upon return, plaintiff may enter.

The return of *liberari feci* is a

full

full execution of the writ, and the plaintiff becomes tenant by *elegit*.

full execution of the writ of *elegit*, and by that the plaintiff becomes tenant by *elegit*, and may maintain an *ejectment*; and he may enter and assign his interest upon the land, and the assignment will be good. For the defendant's continuing in possession after the return of the writ, turns the plaintiff's estate to a right; and therefore he must enter before he can assign it over.

Powell J. the like with this, a case was adjudged in C. P.

Powell, Justice, said, that the like case with this was adjudged in the *common pleas*, while he sat there; that all the objections, that are here made to the action, were made there and overruled; that the court there resolved, that the statute of *Eliz.* mentioning extents that should not be confined to extents upon statutes only, but should be carried to extents upon *elegits*; especially when they were both equally liable to the same exceptions: and therefore, he was of opinion, that the sheriff should have his fees for executing an *elegit*. The other two judges agreed. 2 Lord Raym. 1212. *Tyson v. Parks*.

The act should be carried to extents on *elegit*.

The objections.

The objections are, that no fees were due, consequently no action lay, and where the lands lie in several counties, a man may pay more in fees, than his debt.

No sheriff, under sheriff, deputy, or bailiff of any franchise, &c. shall, for executing an *habere facias possessionem aut seisinam*, demand or receive above 12 d. per pound of the yearly value of any manor, messuage, lands, tenements, or hereditaments, whereof possession or seisin shall be given, whereof the whole exceeds not 100 l. per

For ascertaining the fees for executing writs of *elegit*, so far as the same relate to the extending of real estates; and for ascertaining the fees for executing of writs of *habere facias possessionem aut seisinam*, be it enacted, That from and after the last day of *Michaelmas* term 1717, it shall not be lawful for any sheriff, under-sheriff, deputy-sheriff, or their bailiffs, or for the bailiff of any franchise or liberty, or any of them, by reason or colour of their executing of any writ or writs of *habere facias possessionem aut seisinam*, to demand, ask, or receive, any other or greater consideration, fee, gratuity or reward, than is hereafter mentioned, (which shall be lawful to be demanded and taken,) that is to say, the sum of 12 d. for every 20 s. of the yearly value of any manors, messuage, lands, tenements,

ments, and hereditaments, whereof possession or seisin shall be by them, or any of them given, where the whole exceedeth not the yearly value of 100*l.* and the sum of 6*d.* for every 20*s.* *per annum*, yearly value, 3 Geo. 1. c. 25. l. 16.

If an erroneous execution be delivered to the sheriff, and he executes it, yet he shall have his fees. *Salk.* 332. This means, if he deliver the money over to the plaintiff, for the sheriff has done his duty, but otherwise if execution set aside.

If erroneous execution be executed,

If the sheriff levy, he is entitled to poundage, though the parties compromise before he sells any of the defendant's goods. And that after such compromise neither party ought to rule the sheriff to return the writ, if he do, the court will discharge such rule with costs. *Alchin v. Wells*, 5 Term Rep. 470.

Though parties compromise, he is entitled to fees.

The sheriff may maintain *assumpsit* upon a promise of payment of his fees; *Mo.* 463. *Cro. Eliz.* 654. or he may have debt. 1 *Salk.* 209. 331. 1 *Roll.* 598. l. 35.

And may maintain assumpsit or debt.

He cannot take a bond for his fees. *Cro. Car.* 287.

Cannot take a bond.

Nothing but the poundage can be taken by the sheriff under this statute for levying an execution, therefore it has been adjudged that he cannot be allowed the expence of an auctioneer, or even the levy fee of one guinea. But if the plaintiff chuse to have an auction, he must defray the expences out of his own debt, for there is no color to charge the defendant with it. If the defendant wish to have an auction, he must pay for it out of his own pocket, but it makes no part of the sheriff's account. In actions on simple contracts and judgments for a debt certain, the expence of levying must be paid by the plaintiff, and not the defendant. But if the judgment be for a penalty, the plaintiff has a right to receive the whole of his debt, independent of the expences of the execution. *Woodgate v. Knatchbull*, 2 Term Rep. 148. *Buller J.*

Not to be allowed more than his poundage on sale.

If

Plaintiff is party
grieved.

If the sheriff overcharge the plaintiff, the plaintiff is the party grieved under the stat. 29 *El. c. 4. Ibid.*

If an action be brought for the poundage, it must be by the sheriff, and not by his bailiff, for the sheriff is the only known officer to the court, he may employ whom he pleases, but he is answerable *civiliter* for the acts of all those employed by him; but not *criminaliter* for the acts of his bailiff (a). So that the sheriff is not liable to any corporal punishment, but where it rests in damages, he shall make the party a pecuniary satisfaction. *Ibid.* 3 *Wils.* 316. And the reason is, because the party who is damnified shall have an ostensible person against whom he can proceed. 2 *Term Rep.* 150. *Ashhurst J.*

Retainer.

The sheriff may retain his poundage out of the money levied, so out of money levied by a *levari facias*, on an outlawry, though ordered to be restored on giving security. *Rex v. Burrell, Bunb.* 305. *Vide Parker's Rep.* 377. where he may retain, though no actual levy.

Extortion.

Extortion, signifies any oppression under color of right; but in a strict sense, it signifies the taking of money by any officer, by color of his office, either where none at all is due, or not so much is due, or where it is not yet due. 1 *Hawk. P. C.* 170. Extortion is defined to be an illegal charge made by color of office. *Hutt.* 53.

By the stat. 3 *Ed. I. c. 26.* no sheriff nor other the king's officer shall take any reward to do his office, but shall be paid of that which they

(a) The books mean that the sheriff is not liable to an indictment. *Could J.*

take of the king; and he that so doth, shall yield *twice as much*, and shall be punished at the king's pleasure (a).

By this statute, they can take no more for doing their office than hath since been allowed by authority of parliament. *2 Inst.* 210.

And it hath been resolved, that a promise to pay them money for the doing of a thing, which the law will not suffer them to take any thing for, is merely void. *1 Hawk. P. C.* 171.

It is not said that he shall take no reward *generally*, but no reward to do his office; therefore a bar fee of 20 *d.* taken by the sheriff for every prisoner acquitted, is not against the statute. *Ibid.* *2 Inst.* 210.

But there seems to be no necessity for this distinction, for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence from allowing reasonable fees, for the labor and attendance of their officers; for the chief danger of oppression is from officers being left at their liberty to set their own rates on their labor, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to *known* and *stated fees*, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. *1 Hawk. P. C.* 171. *Vide* title *Arrest*.

At common law this offence is severely punishable at the king's suit, by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And the statute *3 Ed. 1.* doth add a greater penalty than the common law did give, for hereby the plaintiff shall recover his double damages. *2 Inst.* 210.

If it appear by his return that greater fees have been taken for the levy than are allowed, he is also

Offence at
common law.

And by the stat.

When liable to
action.

(a) Escheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whose offices were instituted before the making of this act, are understood. *2 Inst.* 209.

liable

liable to an action on the statute for treble damages at the suit of the party grieved. *Woodgate v. Knatchbull*. 2 Term Rep. 148.

Execution, in real or mixed Actions.

If plaintiff recovers in a real or mixed action, he is to have execution awarded to him, *habere facias seisinam* of a freehold, and *habere facias possessionem* of a chattel interest. When the judgment was extended to the recovery of a term in ejectment, gave birth to the *hab. fac. poss.*

IF the plaintiff recovers in an action, real or mixed, wherein the seisin or possession of land is awarded to him, the writ of execution shall be an *habere facias seisinam*, or writ of *seisin*, of a freehold; or an *habere facias possessionem*, or writ of possession of a chattel interest. *Finch* 470.

When the judgment in ejectment was extended to a recovery of the term itself (the judgment originally being only for damages), it of consequence gave birth to the *habere facias possessionem* in ejectment. In real actions, where the freehold was recovered, the demandant had execution by the writ of *habere facias seisinam*; in ejectment therefore, it was but just that a similar remedy should be permitted to the plaintiff, who, as he now had judgment to recover the possession of the land, might put the sentence of the law in execution, by virtue of the *habere facias possessionem*. *Gilb's Eject.* 148.

These are writs directed to the sheriff of the county, commanding him to give actual possession to the plaintiff of the land so recovered; if he be denied entrance by the tenant, he may break open the door, and take with him the *posse comitatus* if he meet with resistance. *Dalt. Sh.* 255. 350. *Fitz. Exec.* 247. 5 Co. 91. Also he may remove all persons in the house, and ought so to do. 1 Lev. 145. But if it be peaceably yielded up, the delivery of a twig, a turf, or the ring of the door, in the name of seisin, is sufficient execution of the writ, *Br. Rediff.* 5. *Perk.* 42. the end of the writ being to give the party full and actual possession; consequently the sheriff must have all power necessary for this end; besides, in this case the law does not after

May take posse comitatus.

after the judgment, look upon the house as belonging to the tenant, but to him who has recovered.

5 Co. 91.

The sheriff upon the *habere facias seisinam*, may, and ought to execute the writ, although that indeed an estranger be seised of the land, and that neither of the parties to the writ were ever seised thereof. *Plowd.* 12, 13.

Sheriff on hab. fac. seif. ought to execute the writ, although a stranger be seised of the land.

If a common recovery be had of divers messuages, the sheriff upon the writ of execution, may make execution in one of them, in the name of all, without going to every one in particular, but if a man is to be put in execution of divers messuages upon a writ of execution, and the houses are in the possession of several men, he ought to go to every house particularly, and to deliver seisin thereof, for delivery of seisin in one, in the name of all, when they are in several men's possessions is not sufficient, because the possession of one tenant, is not the possession of the other, but each hath his several possession. 1 *Roll. Abr.* 886. *Roll. Rep.* 421. But it seems, that if all the messuages had been in possession of one tenant, it had been sufficient to give possession of one in the name of all. *Ibid.*

Where a common recovery is had of several houses, the sheriff may deliver possession in one, in the name of all. But it is otherwise where houses are recovered in ejectment.

But the surest and best way is, for the sheriff to remove all the tenants intirely out of each house, and when the possession is quitted, to deliver it to the plaintiff. The goods must then also be removed. *See Lutw.* 1486. as to this (a).

Surest way.

If a man upon an ejectment, for 40 acres of land, recovers 30, and not the residue, upon the *habere fac. pos.* the sheriff may deliver him three or more of the acres, in the name of the whole, without dividing of it by metes and bounds, though the plaintiff has not recovered all the acres whereof he has brought his action, and of which he has supposed the defendant tenant. *Trin.* 15 *Jac. B. R.* adjudged 10 *Vin. Abr.* 539. *Vide Palm.* 289.

Land may be delivered in execution, without setting forth the metes and bounds.

(a) The sheriff and his officers before they break open any house or door ought to signify the cause of their coming, and make request that the doors may be opened, even though the king be party. 5 Co. 91. *Dalt.* 353.

o

If

If writ be for 20 acres, so much by estimation of the country must be delivered.

If an *hab. fac. pos.* go to the sheriff to put a man in possession of 20 acres of land, the sheriff ought to give him 20 acres in quantity, according to the custom of the country where this is, and not according to the statute. *Roll. Rep.* 420. *Bridg.* 56. *Floyd v. Bethel.*

Upon recovery of rent or common, the sheriff may deliver possession by word only.

If a man recover rent or common, whereupon a writ of possession issues out, and the sheriff comes upon the land, and delivers seisin of the rent or common by word only, this is well done, and the recoveror is in actual possession by it. *Ibid.* *Br. Seisin*, pl. 36. *2 Ass.* 24.

If there is a recovery of an house, sheriff may put the party in possession by delivering to him the ring of the door of the house, or may open the door, and bid him enter, and take possession, *Park.* 43. provided no tenant be there.

If sheriff thrusts out all he can find, and after he is gone, some persons lurking in the house left, may re-execute.

If the sheriff thrusts out all persons he can find in the house, and gives the plaintiff, as he thinks, quiet possession, and after the sheriff is gone there appear some persons to be lurking in the house, this is no good execution, and therefore the plaintiff shall have a new *habere fac. pos.* because he never had execution. *1 Leon.* 145. But if not returnable, why not re-execute the writ?

Lord Mansfield. The sheriff delivers possession at the shewing of the plaintiff, and at the peril of the plaintiff; who is, at his peril, to take possession of no more than he is entitled to. *Connor v. West*, 5 *Burr.* 2672. *Saville* 28. *Queen v. Aylesworth.* The old rule that the sheriff is to be informed upon the record *exactly* what he is to take possession of, is out of use. *Ibid.*

Where the recovery is of land, and more than demanded by 500 acres, it is sufficient to give possession of three acres in the name of the whole.

Where the recovery is of land, and there was more demanded than recovered; as suppose the demand had been for 500 acres, and a verdict and judgment only for 100 acres, it is not sufficient to give possession of one acre in the name of the whole that are recovered, but he must set forth all the acres in particular, so that the recoverors shall have the benefit of the judgment by certainty, and the

the several profits, without interruption or disturbance. *Palm. 289. Molineux v. Fulgam.*

If the defendant dies before the execution, it may be done against his heir; for, in ejectment, the ejector by intendment is a disseisor. *1 Roll. 887. l. 10.* If defendant dies before execution.

If tested before lessor of plaintiff's death, though not sued out till after it, it is regular. *4 Bur. 1970.* If tested before lessor dies, sufficient.

If on a judgment in ejectment for five eighths of a cottage, the sheriff gives possession of the whole, the court will make a rule on sheriff and the lessor of plaintiff, to restore possession of three eighths to the tenant. *3 Wils. 49. Roe v. Dawson.* If judgment for five eighths, and sheriff gives possession of the whole.

Until the bailiffs are withdrawn, and possession completely given, the execution is not complete. *1 Salk. 321. 1 Lev. 145. 6 Mod. 115.* When possession complete.

If the recovery be of a rent, the sheriff may put the party in seisin thereof, by the corn or grass growing on the land, out of which the rent is issuing; or by the twig or bough of a tree growing upon the same land; or by distress of cattle *levant* and *couchant* upon the same land; or by a clod of the same land. And this is a good seisin of the rent, notwithstanding that the day of payment of the rent be not then come. *Dalt. 255.* If recovery of a rent, how to put party in possession.

The sheriff is not bound to know or seek the land demanded; and therefore, except the demandant shew it to him, he may make his return accordingly. *Dalt. 255.* Sheriff not bound to know or seek the land.

If the sheriff gives possession to the party, and the other ejects him presently, the sheriff may restore him to the possession notwithstanding his former execution, because he ought to leave him in a peaceable and quiet possession. *Palm. 289. Molineux v. Fulgam.* If sheriff gives possession, and he is ejected after.

So if in a short time after defendant turn plaintiff out of possession, it is a disturbance and an attachment will go. *6 Mod. 27. Sty. 277.* When an attachment.

If a man recovers lands in three towns, and hath a writ of execution awarded to the sheriff, the If a recovery in three towns, how sheriff to give possession.

the sheriff may deliver him in execution and possession of the land in one town, in the name of all the land, and it is a good execution for all the lands recovered in all the three several towns. *Dalt.* 256. *Per cur.* C. B. 31 *Eliz.*

The sheriff is to be shewn the premises and plaintiff to take possession at his peril.

In ejectment the old rule was, that there ought to be a sufficient certainty specified in the writ, that the sheriff may know how to deliver possession. But since the case in *Soville* 28. that doctrine is exploded, for the plaintiff is to shew the sheriff, and take possession at his peril, of only what he has title to. If he thinks more, the court will, in a summary way, set it right. *Cottingham v. King*, 1 *Burr.* 629. The sheriff delivers possession at the shewing of the plaintiff. 5 *Barr.* 2673. *Connor v. West.*

If shewn a stranger's land.

It is said if the demandant shall shew to the sheriff a stranger's land, by force whereof the sheriff enters, &c. yet he is no trespasser. *Keitw.* 119. 120. *Dalt.* 257.

When need not return writ.

If the sheriff duly execute the writ, and the plaintiff or demandant have his demand there, though the sheriff returns not the writ, it is not material. *Dalt.* 179. 256. This means if he be not called on by rule of court.

If disturbed in the execution an attachment will be granted.

If the officer be disturbed in the execution of the writ, on an affidavit, the court will grant an attachment against the party, whether he be the defendant or a stranger; because the writ is the process of the court, and any disturbance given to the execution of it is a contempt to the authority of the court from whence it issues, and as such will be punished by the court. *Mod. Cases* 27.

For poundage on this writ, *vide* title *Sheriff's Fees*.

Escape.

ESCAPE (*escapium* from the French *eschapper*, i. e. *effugere* to fly) signifies a violent or privy evasion out of some lawful restraint; as where a person is arrested or imprisoned, and gets away before delivered by due course of law. *Stamf. Pl. C. c. 26, 27.*

Escape derivation of the word.

Escape is also understood to be when any person who being under lawful arrest, and restrained of his liberty, either violently or privily evades such arrest and restraint, or is suffered to go at large before delivered by due course of law.

Also understood to be.

They are in *civil* or in *criminal* cases. As to escapes in civil cases, it seems agreed as a general rule that wherever a sheriff or other officer hath a person in custody, by virtue of an authority from a court which hath jurisdiction over the matter, that the suffering such a person to go at large is an escape, for he cannot judge of the validity of the process or other proceeding of such court, and therefore cannot take advantage of any errors in them; hence the law allows him, in an action of false imprisonment, to plead such authority; which will excuse him, *though it be erroneous*; but if the court hath no jurisdiction of the matter, then all is void; and consequently the officer not punishable for suffering a person taken upon such void authority to escape. *Moor 274. Dyer 175. Poph. 203. 2 Str. 509. 820. 1184. 2 Lord Raym. 1530.*

Escapes in civil cases, what.

The law allows sheriffs to justify under the authority.

But if the court has no jurisdiction, all is void.

Upon this distinction it hath been adjudged that if a *ca. sa.* issue after a year and a day, *without suing out a seire facias*, this error will not excuse the sheriff in an escape. *Cro. Car. 28. Salk. 273.*

If a *ca. sa.* issue after a year and day, the sheriff though no *sci. fa.* issued, is liable if defendant escapes.

But though a sheriff may not take advantage of an erroneous process, yet he shall of a *void process*, on which it is no escape to let a prisoner go. *Salk. 700.*

The sheriff may not take advantage of erroneous

The process,

Cannot be charged with an escape, before he had defendant in actual custody.

The sheriff cannot be charged with an escape before he had the party in *actual custody* by a *legal authority*; and therefore if an officer, having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, here the officer cannot be charged with an escape. *Bro. Escape, 22.*

Sheriff not liable unless party be legally arrested.

In no case shall the sheriff be liable, except the person who has escaped has been in *actual custody*; that is, unless legally *arrested by his own officers*, handed over to him in the gaol by the former sheriff, or regularly delivered in custody. *2 Barnes 259. 3 Co. 71.*

If in actual custody, and another writ comes, he must detain, or it is an escape.

But if *A.* is arrested, and in the actual custody of the sheriff, and afterwards another writ is delivered to him at the suit of *J. S.* upon the delivery of the writ *A.* by construction of law is immediately in the sheriff's custody, without an actual arrest; and if he escapes, the plaintiff may declare, that he was arrested by virtue of the second writ, which is the operation it has by law, and not according to the fact. *5 Co. 89.* But where the sheriff, not having actually arrested defendant, but accepts an undertaking of his attorney, this was held to be *no escape.* *Hodgson v. Akerman, Esq. Lord Mansfield's Summer Ass. 1776.*

If no actual arrest and takes an undertaking not liable to a detainer.

Bailiff of a liberty bringing a prisoner taken in execution out of his liberty.

Where a bailiff of a liberty, *having return of writs and execution* on them, brings a prisoner taken in *execution out of his liberty*, to lodge him in the county gaol, it is an escape, and shall subject the bailiff. *Boothman v. Lord Surrey, 2 Term Rep. 3. 3 Co. 41.*

Undertaking and no bail put in.

So if a sheriff's officer take an undertaking without plaintiff's assent, and no bail above put in. *7 Term Rep. 109. Fuller v. Prest. Vide title Bail.*

If any one desires to charge in custody, and

For the greater security of creditors, and the better to enable them to prove the actual custody of the prisoner, the stat. 8 & 9 *W. 3. c. 27. sect. 9.* enacts, "that if any one, desiring to charge any one with any action or execution, shall be
" desired

desired to be informed by the marshal or warden, or their respective deputies, or by any other keeper of any other prison, whether such person be a prisoner in his custody, or not, the marshal or warden, or such other keeper, shall give a true note in writing thereof, to the person so requesting the same, or to his lawful attorney, upon demand, at his office for that purpose, or, in default thereof, shall forfeit 50*l*.; and if such marshal, &c. shall give a note in writing, that such person is an actual prisoner in his or their custody, every such note shall be taken as a sufficient evidence, that such person was at that time a prisoner in actual custody."

wishes to be informed of the prisoner, marshal, &c. to give a true note in writing, and in default to forfeit 50*l*.

Every person in prison by process of law is to be kept in *salva & arcta custodia*, in order to compel them the more speedily to pay their debts, and make satisfaction to their creditors. *Plow. 36. 3 Co. 44. 2 Inst. 381. 1 Rel. Abr. 806.*

Every person to be kept in safe and close custody.

When a person is acknowledged to be in actual custody, delivering a writ to the sheriff against such person is an arrest in law, and will subject the sheriff or other officer in case of an escape. *Jackson v. Humphreys, Salk. 274.*

If there be an acknowledgment in custody and after an escape.

If the plaintiff, by word, license the sheriff to deliver the prisoner, no action will lie for an escape. *27 H. 8. Ch. 24.*

Plaintiff's license to deliver; no action lies.

The sheriff shall be liable for an escape, of any committed to him on an escape warrant. *1 Ann. Stat. 1. c. 6.* So on process of the admiralty. *Sav. 11. 15. or on a capias utlogetum. 5 Mod. 200. 2 Str. 901.*

Liable if committed on an escape warrant, &c.

There are two kinds of escapes, the one voluntary, and the other negligent.

Two kinds of escape.

Voluntary, is when an officer arrests another for a debt and lets him go by consent, in which case the sheriff is answerable to the plaintiff for the damages, for a voluntary escape cannot be justified. Therefore where one was intrusted with the keys of the prison, and he lets himself out, this is a voluntary

Voluntary, what,

tary escape. *Caf. in temp. Ld. Hard. 311. Wilkinson v. Salter.*

Turnkey.

If a gaoler makes a prisoner in execution turnkey, and he goes out on an errand, and returns, it is a voluntary escape. *Wilkinson v. Salter, Rep. temp. Hard. 310.*

Bailiff may retake though he let the prisoner go.

A bailiff who has arrested a prisoner on *mesne process*, may retake him *before the return of the writ*, though he voluntarily permit the prisoner to escape immediately after the arrest. *Atkinson v. Matteson, 2 Term Rep. 172. Ashhurst J.*

Voluntary return before action.

A voluntary return of a prisoner after an escape, *before action brought*, is equal to a retaking on a fresh pursuit, but it must be pleaded. *2 Term Rep. 126. Bonafous v. Walker.*

If a sheriff having arrested the defendant on *mesne process*, keep him in his custody after the return of the writ, and then carry him to prison, he is not liable for an escape if the jury find that the plaintiff has not been delayed or prejudiced in his suit.

On 11th January 1792, the defendant was arrested on a writ of special *capias* returnable the 20th. That to prevent his being sent to gaol, an *alias* issued returnable in 8 days of the Purification. That a writ of *hab. corp. cum causa* was issued before the 20th Jan., tested 28th Nov. 1791, to remove defendant to the custody of the marshal, but he was not in fact brought up nor committed till the 21st April being the *essoign day* of *Easter term*; after which the plaintiff filed a declaration against him. That from the time of the first arrest till the commitment he remained in custody. The jury found in an action for an escape against the sheriff, that the plaintiff had not been delayed or prejudiced in his suit, verdict for plaintiff; and the question was reserved for the opinion of the court, whether he was entitled to recover. *Lord Kenyon* — If the sheriff had taken him and returned *capi corpus*, and the debtor were not afterwards forthcoming, then the exigency of the writ would not have been answered; but here the exigency of the writ was performed so far that the debtor was forthcoming when the plaintiff called upon him to answer his demand. *Buller J.* — There is a difference in cases where a party is in custody in execution

execution and on mesne process. In the former the creditor has a right to the body of his debtor every hour till the debt is paid, and if the prisoner escape, may bring an action of debt upon the statute against the sheriff, in which he *may* (without considering how far he *must*) recover the whole debt. But where the prisoner escapes out of custody on *mesne process*, the creditor cannot bring an action of debt, but is driven to his action on the case, which is founded on the damage sustained, and if no damage be sustained, the creditor has no cause of action. The damage which the creditor may sustain in such a case as the present, is the delay and prejudice in recovering his debt so soon as he otherwise might; but in this case the jury found that in point of fact, the plaintiff was not delayed or prejudiced. I do not see indeed how that finding corresponds with the dates; but it is a sufficient answer to this application, that the jury were satisfied that there was no prejudice to the plaintiff. The *stat. 2. Geo. 2. c. 22.* enacts that the sheriff shall not carry the debtor to prison within 24 hours after the arrest. Then what is the time within which the sheriff must carry the debtor to gaol? at the return of the writ; afterwards the sheriff keeps him at his peril, in case the creditor is delayed. Rule absolute for a nonsuit. *Planck v. Anderson*, 5 Term Rep. 37.

In an action against the sheriff for the escape of a prisoner on *mesne process*, the plaintiff was nonsuited, because he could not prove any debt against the prisoner who escaped. *Alexander v. Macaulay*, 4 Term Rep. 611.

Plaintiff in an action for an escape must prove his debt.

An administratrix may maintain an action in her own name against the marshal or sheriff for the escape of a prisoner who is in execution of a judgment obtained by her as administratrix. 2 Term Rep. 126. *Bonafous v. Walker*.

An administratrix may maintain the action.

If the party escapes out of one of the compters in London, the action shall be brought against both sheriffs. *Carth. 145. Reading v. Edwin & an.*

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If

If taken in execution, and goes with a follower.

If a sheriff's officer having taken a prisoner in execution permit him to go about with a follower of his before he takes him to prison, it is an escape. *Benton v. Sutton*, 1 *Bos. & Pull. Rep.* 24.

If seen at large.

If the defendant be taken in execution, and seen at large for any the shortest time even before the return of the writ, it is an escape. 2 *Black Rep.* 1048.

Wardens and turnkey to the Fleet.

But where the turnkey lets the prisoner out, it was held, that he not being the warden's deputy, it was a negligent escape, and not voluntary. But had he been the warden's deputy, it had been otherwise. *Ibid.*

Negligent escape.

Negligent escape, is when one is arrested, and afterwards escapes, against the will of him that arrested him, or had him in custody; and is not pursued by *fresh suit*, and taken again before the party pursuing hath lost sight of him. *Crompt. Just.* 36.

Difference between an escape on mesne process and execution.

There is a difference between an escape on *mesne process*, and *execution*; if the sheriff arrest a person on *mesne process*, and he is rescued by *J. S.* he may return the rescue, and such return is good, and no action of escape lies against him, after such return. 1 *Roll. Abr.* 807. 1 *Jon.* 207. 1 *Roll. Rep.* 388. 3 *Lev.* 46.

If after judgment on a ca. sa. sheriff cannot return a rescue but must raise posse.

But after judgment on a *capias ad satisfaciendum*, the defendant is arrested, the sheriff cannot return a rescue, for in such case the sheriff is obliged to raise the *posse comitatus*, if needful. 1 *Roll.* 807. *Cro. Car.* 240. 255. 8 *Co.* 42. *Cro. Eliz.* 868. *Bull. Nisi Pri.* 59, 60.

If taken in execution, and escapes, debt lies.

If a man be taken in *execution* upon a *capias ad satisfaciendum*, and is committed to the gaol, and the sheriff suffereth him to make an escape, the sheriff is chargeable for the whole debt. 3 *Co.* 5. *Dalt.* 484. 2 *Term Rep.* 126. *S. P. Bonafous v. Walker.*

Action on the case for an escape, upon

In *Trin.* term 1774, a declaration was delivered to the turnkey of the *Fleet* against defendant who was

was a prisoner. On 1st of *Oct.* the defendant voluntarily permitted him to escape and go at large. That plaintiff knowing of such escape on first of *October* did proceed, and in *Hilary* term obtained final judgment. That after final judgment, the plaintiff commenced his present action against the warden. Defendant having so escaped on first of *October*, returned to the Fleet prison on same day, and has ever since continued therein in defendant's custody. Verdict for plaintiff subject to the opinion of the court.

Cur.—Whenever a gaoler permits a voluntary escape, from that moment he commits a *trespass*, and the plaintiff has a right of action to recover such damages as a jury shall please to give him; the prisoner when voluntarily suffered by the gaoler to escape is instantly at large, the gaoler cannot afterwards retake and detain him for the same matter; the plaintiff may retake him by an escape warrant, but has his option to proceed as he pleases, either against the defendant, or the warden; defendant is not now a prisoner at the plaintiff's suit, altho' he be locked up every night, and tho' the plaintiff might lawfully proceed to judgment against him, yet he could not charge him in execution, *Stin.* 582. is in point. There is not the least doubt, but that judgment ought to be for the plaintiff, and if we should do otherwise we should permit every gaoler in *England* to let his prisoners go at large, as much as if they had never been arrested; if the escape be voluntary in the gaoler, nothing afterwards will purge it. *Salk.* 271. Judgment for the plaintiff. *Ravenscroft v. Eyles*, 2 *Will.* 294.

It was formerly held that when the sheriff suffered a prisoner in execution to make a voluntary escape, the prisoner was in such case absolutely discharged from the creditor, and that the right of action was entirely transferred against the sheriff, who by means of such escape became *debitor ex delicto*. *Leon.* 73.

But the stat. 8 & 9 *W.* 3. c. 26. hath taken away all distinction between voluntary and permissive escapes,

whether process, not guilty pleaded, it turns out on a voluntary escape the prisoner returns to the Fleet the same day, and the plaintiff proceeds to final judgment, yet the action lies against the warden, though not brought till after final judgment obtained.

Prisoner on voluntary escape is instantly at large, and gaoler cannot retake.

Plaintiff may retake, but at his option.

Not now a prisoner, at plaintiff's suit.

Nothing purges a voluntary escape.

It was held, that when sheriff suffered a voluntary escape, the prisoner was discharged from the creditor and action transferred to the sheriff.

But now voluntary and permissive escapes

are taken away with regard to the plaintiff by this act, enacting, that the creditor on the debtor's escape from the prison, may have a new writ to retake him.

Does not take away plaintiff's right against the sheriff.

If the marshal, &c. shall take a reward from a prisoner to effect an escape he forfeits 500*l*.

All prisoners either on contempt or *meine process*, or in execution, shall be detained within the prison or rules, unless by his corp. or rule of court.

escapes, with regard to the plaintiff's remedy, enacting,
 " That if any prisoner who is or shall be committed in execution to either or any of the said respective prisons, shall escape from thence by any ways or means howsoever, the creditor or creditors, at whose suit such prisoner was charged in execution at the time of his escape, shall or may retake such prisoner by any new *capias*, or *capias ad satisfaciendum*, or sue forth any other kind of execution on the judgment, as if the body of the prisoner had never been taken in execution." *s. 7.*

But this act does not take away the plaintiff's remedy by action for the escape against the sheriff, for he has no occasion to proceed against the defendant unless he thinks proper, but against the sheriff for his damages, and leave the sheriff to justify his conduct.

" If any marshal or warden, or their respective deputy or deputies, or any keeper of any other prison within this kingdom, shall take any sum of money, reward, or gratuity whatsoever, or security for the same, to procure, assist, connive at, or permit any such escape, and shall be thereof lawfully convicted, the said marshal or warden, or their respective deputy or deputies, or such other keeper of any prisons as aforesaid, shall for every such offence forfeit 500*l*. and his said office, and be for ever after incapable of executing any such office." 8 & 9 *W. 3. c. 26 s. 4.*

All prisoners either upon contempt or *meine process*, or in execution, who shall be committed to the custody of the marshal of the *King's Bench* prison, or warden of the *Fleet*, shall be detained within the said prisons or the rules of the same (a), until they be discharged by due course of law; and if the said marshal or warden, or any other keeper of any prison, shall suffer any prisoner to go at large out of the

(a) Escape from the rules is not a voluntary escape without the marshal's knowledge. 2 *Term Rep.* 126.

rules, (except by habeas corpus, or rule of court, which rule shall not be granted, but by motion made, or petition read in court) every such going or being out of the said rules shall be adjudged and deemed, and is hereby declared to be an escape. 8 & 9 W. 3. c. 26. s. 1.

Every person obtaining judgment in any escape against the marshal or warden, or their deputies, shall have not only the remedies already by law allowed, but the judges of the courts where such judgments shall be obtained (upon oath made by the persons obtaining such judgment, that the same was obtained without fraud or covin, and that the debt of the prisoner making such escape was a true and real debt, and unsatisfied) shall, upon motion, sequester the profits of the office of marshal and warden, or so much thereof, as they shall think fit, and apply the same towards satisfaction of the debt due from the prisoner who escaped, together with all cost and damages recovered. And if they sue forth any writ of error, they shall put in bail. s. 2, 3.

Every person obtaining judgment against the marshal or warden to have all remedies against them by law allowed, but judges to inquire the profits of the office.

If they bring error, bail.

By stat. 5 Geo. 2. c. 30. in case any gaoler, to whom a bankrupt is committed, shall wilfully suffer such person to escape, or to go without the walls or doors of the prison, such gaoler shall for such offence, being convicted by indictment or information, forfeit 500*l.* for the use of the creditors.

If a bankrupt is committed and escape, to forfeit 500*l.*

s. 18.

The writ of *habeas corpus* is an ancient writ, and what the subject is by law entitled to; yet if a sheriff or other officer, who hath the custody of a prisoner, does by colour thereof suffer the prisoner to go at large, it is an escape. *Cro. Car.* 14. *Roll. Abr.* 808. *Hob.* 202. 3 *Co.* 44.

If a sheriff or officer does by colour of a *ha. corp.* suffer a prisoner to go at large, it is an escape.

As if an *habeas corpus* be returnable the next term, and the sheriff or gaoler in the mean time suffers the prisoner to go at large, it is an escape, though he appear at the return of the writ; for the writ only empowers the gaoler to bring him directly to the court, and if he gives him any

If *ha. corp.* be returnable the next term, and the sheriff lets the prisoner go, it is an escape, though he appear at the return of the writ.

liberty

liberty in the mean time, it is at his peril. *Hard.* 476.

If the defendant be in prison and a *ba. corp.* is brought and he is rescued going to court.

The sheriff was ordered to bring up the body in custody in *Newgate* on *mesne process*, by *habeas corp.* and the defendant was rescued going to court, the sheriff was held to be liable; for the sheriff having had notice when the body was to be brought up, he might have provided against a rescue by assembling the *posse comitatus*. 1 *Str.* 489. *Crompton v. Ward & an.*

If he be arrested going to gaol and,

If the sheriff arrests the party by virtue of *mesne process*, and he is rescued as he carries him to gaol, it will be a good excuse for the sheriff. *Cro. Jac.* 419. 1 *Str.* 435.

If he be once within the walls of the prison, tho' on *mesne process*, yet a rescue from thence is no excuse.

And on the other hand, if the party be once within the wall of the prison, though the custody be on *mesne process* only, yet a rescue from thence by any but common enemies, will be no excuse: if a company of rebels break the prison, and let out the prisoners, yet the sheriff is answerable; because the law supposes the sheriff and his *posse* are sufficient to resist such a force. 1 *Roll. Abr.* 811. 4 *Co.* 84. These are grounds that are not to be disputed. *Pratt C. J. Crompton v. Ward* 1 *Str.* 435. But in the case of *mesne process*, if the sheriff meets the party again by accident (having process) and is told it is the defendant, he is bound to arrest him, and then, because it is not supposed that he has always the *posse* along with him, he is excused against a rescue. *Ibid.* 436. *S. C.*

Must take care that he does not let the prisoner more at liberty than he ought.

As the sheriff must be careful that he does not give the prisoner more liberty than by law he ought to do, when he acts in obedience to a lawful authority; so he must take care that he does not let him go at large by color of a void authority. *Dalt. Sheriff*, 486.

Upon one day's notice in writing, the marshal, &c. shall shew the prisoner to the creditor at whose

“ That if any marshal or warden for the time being, or their respective deputy or deputies, or other keeper or keepers of any other prison or prisons, shall, after one day's notice in writing
“ given

“ given for that purpose, refuse to shew any prisoner committed in execution to the creditor at whose suit such prisoner was committed or charged, or to his attorney, every such refusal shall be adjudged to be an escape in law.” 8 & 9 W. 3. c. 27. *sect.* 8.

Suit he is, or shall be judged an escape.

The gaoler shall upon request of any creditor, having proved his debt, and producing a certificate thereof under the hands of the commissioners, (which the commissioners are to give *gratis*,) produce such person so committed: and in case of refusal he shall forfeit 100 *l.* for the use of the creditors, to be recovered by action of debt in the name of the creditor requesting such sight. 5 *Geo.* 2. c. 30. *f.* 19.

Gaoler to produce bankrupt to creditor.

If the party arrested had escaped of his own wrong, without the consent of the officer, now upon fresh suit, the officer may take him again and again, so often as he escapeth, although he were out of view, or that he shall fly into another town or county, and bring him before the justice upon whose warrant he was first arrested. *Dalt.* c. 113.

But if he is arrested and escapes of his own wrong the officer may take him.

But it is said generally in some books, that an officer who hath negligently suffered a prisoner to escape, may retake him wherever he finds him, without mentioning any fresh pursuit; and indeed since the liberty gained by the prisoner is wholly owing to his *own wrong*, there seems to be no reason he should take any manner of advantage from it. 2 *Haw.* 131, 132.

Yet it is said in some books, that he may retake, and this with good reason.

Escape Warrant.

BY stat. 1 *Ann.* c. 6. it is enacted, “ That “ if any person or persons already committed, “ rendered, or charged, or who shall hereafter be “ committed, or rendered to, or charged in the “ custody of the marshal of the *Queen’s Bench* for “ the time being, or to or in the prison of the *Fleet*, “ either

Persons in the Queen’s Bench or Fleet prison, committed, or rendered, or charged in the custody of the marshal or Fleet

prison on mesne
process or execu-
tion, &c.

making escape
&c.

It shall be lawful
upon oath there-
of made, for the
judge to grant a
warrant for re-
taking such pri-
soner.

Directed to all
sheriffs, mayors,

“ either in *execution*, or upon *mesne process*, or
 “ upon any *contempt* in not performing such or-
 “ der or decree by any of her majesty’s courts at
 “ *Westminster*, and such person or persons shall, at
 “ any time after such commitment, render, charge,
 “ or being in execution, and before he, she, or they
 “ shall have made payment or satisfaction to the
 “ respective plaintiff or plaintiffs, creditor or cre-
 “ ditors, or shall have cleared him, her, or them-
 “ selves of such contempts, as he, she, or they were
 “ or shall be charged with at the time of such their
 “ commitment, render, charge, or being in exe-
 “ cution as aforesaid, make any escape from the
 “ custody of the marshal of the *Queen’s Bench*, for
 “ the time being, or from the prison of the said
 “ *Queen’s Bench*, or from the prison of the *Fleet*, or
 “ either of them, or shall go at large, at any time
 “ after the three-and-twentieth day of *Jan. 1702*,
 “ it shall and may be lawful, upon oath thereof in
 “ writing, to be made by one or more credible per-
 “ son or persons, before any one of the judges of that
 “ court where such action was entered, or judgment
 “ and execution were obtained, or where the party
 “ was so committed or charged, as aforesaid, to and
 “ for such judge, before whom such oath shall be
 “ made, as abovesaid, and such judge is hereby
 “ authorized and required, from time to time, to
 “ grant unto any person whatsoever, who shall de-
 “ mand the same, one or more warrant or war-
 “ rants under his hand and seal, therein reciting the
 “ action or actions, execution or executions, con-
 “ tempt or contempts, with which such person or
 “ persons so escaping, or going at large, stood
 “ charged, or were committed at the suit of any
 “ person or persons on whose behalf such warrant
 “ or warrants shall be demanded at the time of
 “ such escape, or going at large, (which said war-
 “ rant or warrants shall be in force in all places
 “ whatsoever, within the kingdom of *England*, do-
 “ minion of *Wales* and town of *Berwick-upon-*
 “ *Tweed*;) directed to all sheriffs, mayors, bailiffs,
 “ constables,

" constables, head-boroughs and tithing-men, &c. to seize and
 " therein and thereby commanding them, and retake him.
 " every of them, in their respective counties, cities,
 " towns, and precincts, to seize and retake such per-
 " son or persons so escaped or going at large, and
 " such person or persons so retaken upon such war-
 " rant forthwith to convey and commit to the com- Who shall con-
 " mon gaol of such county, where such person or vey and commit
 " persons so escaped, or going at large, shall be re- to the county
 " taken, there to remain without bail or mainprize, gaol, where tak-
 " or being thence upon any account whatsoever en, there to
 " delivered or removed, until he, she, or they shall remain, &c.
 " have made full payment or satisfaction to the re-
 " spective plaintiff or plaintiffs, creditor or credit-
 " ors, in such action or actions, execution or exe-
 " cutions named, or until the judgment or judg-
 " ments, on which such execution or executions
 " was or were sued out against such person or per-
 " sons, shall be reversed or discharged by due course
 " of law, or until judgment in such action or actions
 " be given for such person or persons so committed,
 " as aforesaid, or until the said contempt or con-
 " tempts, for which such person or persons were or
 " shall be committed, be cleared and discharged;
 " except such person or persons be charged with *Exception;*
 " treason or felony, or any other crime, matter or cause,
 " for and on the behalf of the queen's majesty,
 " her heirs and successors; and if he or she, for any
 " such cause, on behalf of the queen, her heirs
 " and successors, be removed to any other gaol or
 " prison, he or she shall be in the custody of
 " such gaol, charged with all the causes with which
 " he or she is, or shall be charged in the gaol from
 " whence he or she shall be removed: And every
 " mayor, or other officer, as aforesaid, after delive- *Every mayor, &c.,*
 " ry of such prisoner so retaken, together with such after delivery of
 " warrant to the sheriff, shall take a note in writ- prisoner, shall
 " ing from such sheriff, testifying the receipt of take a receipt
 " such prisoner, which said sheriff is hereby re- from the sheriff.
 " quired to receive such prisoner, and give such
 " note. And every such sheriff as aforesaid,
 " after

Sheriff to make return of warrant, &c.

“ after the execution of such warrant, shall forth-
“ with make a return thereof to the court where
“ the action shall be depending, or judgment,
“ order or decree, had or obtained; which shall
“ be entered and filed upon record.”

After voluntary escape, cannot retake.

After a *voluntary* escape, gaoler cannot retake the prisoner; after an *involuntary* escape, he may without warrant and on a *Sunday*. *Barnes* 373. *5 Term Rep.* 28.

Escape lies, though taken upon an escape warrant. *Com. Dig.* title *Escape*, 644.

If a prisoner in execution in K. B. be turned over to the Fleet, a judge of K. B. or C. P. may grant warrant. May be taken on a Sunday.

If a prisoner in execution in K. B. be turned over to the Fleet, and escape, a judge of the king's bench or common pleas may grant an escape warrant. *8 Mod.* 240. And he cannot come out on a day rule. *6 Mod.* 63. He may be taken on a Sunday. *6 Mod.* 95. *2 Salk.* 626. *2 Lord Ray.* 1028. *Str.* 387. But cannot be brought before a judge by a day rule as another prisoner may, to shew cause of action against another. *Mod. Caf.* 63.

If not taken by lawful authority, shall not be committed.

But if the party be not taken by *lawful authority* upon an escape warrant; if this appears upon the return of the warrant, he shall not be committed to the county gaol, but to the former prison; as if brought, not by a constable or other officer, but by persons not known. *Mod. Caf.* 154.

If he escapes, and returns, and commits a second escape, cannot be taken for the first.

If a man escape, and returns again, and then commits a second escape, he cannot be taken up for the first escape, it being purged by his return. *Str.* 423.

If discharged by agreement.

So, if he be discharged by agreement, after commitment upon an escape warrant, he shall not be afterwards retaken. *Mod. Caf.* 254.

If prisoner is entitled to his discharge.

If the defendant is entitled to his discharge at the time of his escape, and would be entitled to it as soon as taken on the escape warrant, the court will supersede the warrant. *Str.* 401. *Webb v. Thompson.*

Cannot be retaken for fees.

If a prisoner escapes, and plaintiff sends an order for his discharge, the gaoler cannot retake him for his fees. *Str.* 909.

If the prisoner escape by *negligence* of the sheriff, the sheriff may *retake* him, and he shall not have an *audita querela*. 3 Co. 32. b. 1 Sid. 330. Mod. 660. If prisoner escapes by negligence, may retake.

Or he may have an action on the case against the prisoner for his escape, whereby he becomes subject to the action of the party. Cra. Eliz. 53. 237. 1 Lev. 237. Lut. 64. Mod. 660. And this before an action or recovery against the sheriff, as well as after. Mod. 660. Godb. 125. Cra. Eliz. 53. Or may have an action.
And this before action against sheriff.

But if he escapes *voluntarily*, he cannot be *retaken*. But if voluntarily. Barnes 373. by the sheriff nor plaintiff. Show. 174.

What shall not be an Escape.

It will not be an escape, if the party was *never* in custody; as if the old sheriff does not deliver him over upon such execution. 3 Co. 72. 2 Lev. 54. So if he goes out of prison by reason of a sudden fire in the gaol, 1 Roll. 808. b. 7. or the gaol be broke by the king's enemies. Bro. Escape, 10. 1 Roll. 808. l. 5. If rescued on *treason* process, before he was in gaol. 1 Roll. 807. l. 35. 2 Cro. 419. 2 Lev. 144. 1 Roll. 389. Though the rescous be not returned, 2 Lev. 144. or if it be. 1 Roll. 440. So, if the defendant be retaken on fresh suit, *before* action commenced for the escape. 1 Roll. 808. l. 52. 3 Cro. 52. Godb. 404. What no escape.

Though the fresh suit was not begun till a day and night after the escape. 1 Roll. 809. l. 10. Nor though he did not retake him till he fled into another county. 3 Co. 52. Bro. Escape, 54. Though he was out of sight. 3 Co. 52.

So a voluntary return of a prisoner, after an escape, *before* action brought, is equivalent to a retaking on a fresh pursuit, but it must be pleaded. 2 Term Rep. 126. Bonafous v. Walker. Voluntary return.

The sheriff shall not be charged for an escape, if the prisoner goes out of prison with the *assent* of his plaintiff. Assent of the plaintiff.
P 2 creditor,

creditor, 2 *Inst.* 382. though the assent be only by parol. *Dy.* 275. a. 2 *Inst.* 382.

Though he go out of the direct way on *ba. corp.*

So it will not be an escape, if the sheriff upon a *ba. corp.* brings his prisoner to *Westminster*, though he goes out of the direct way. 3 *Co.* 44. *Mo.* 299.

Of the preceding or succeeding sheriff. Prisoners omitted to be turned over to new sheriff, will be deemed an escape.

Where a new sheriff is appointed, his predecessor ought to deliver over by indenture all the prisoners in his custody, charged with their respective executions; for the prisoners, until they are turned over to the new sheriff, remain in the custody of the old sheriff; and if he omits to deliver them over, every omission will be deemed an escape, wherewith he will be chargeable. *Hob.* 266. 2 *Roll. Abr.* 457. *Cro. Eliz.* 365. *Bulst.* 70. 2 *Leon.* 54. 4 *Co.* 72.

Gaoler suffers a voluntary escape in A. who comes back to the prison, and escapes again in the time of a succeeding gaoler, he is chargeable.

J. S. being in execution in the *Fleet*, was suffered to make a voluntary escape, after which he returned again to the *Fleet*; and the defendant being made warden in the place of the former warden, J. S. was turned over with the other prisoners, and afterwards suffered to escape; and the question was, whether the voluntary escape suffered by the former warden did not so entirely discharge the execution, that the prisoner could not be retaken, nor judged in execution by law, even though he should yield himself to it? and it was held, that it did not, and that the succeeding warden should be chargeable with the escape suffered in his time. 2 *Lev.* 109. *Lenthal v Lenthal*, adjudged. 3 *Keb.* 487. *S. C.* *Vent.* 269. *James and Pierce*, *S. P.* adjudged.

One voluntarily suffered to escape, voluntarily returned, and being detained, brought an action, held lawful.

So in the case of one *Grant*, who being in the custody of the former marshal, was suffered by him voluntarily to escape, after which he returned voluntarily to prison, and being found in prison, the succeeding marshal detained him; and in an action of false imprisonment brought by him, the court held that he might, and that if he had suffered him to go at large, it would be an escape. 6 *Mod.* 183. *Grant v. Southers*. *Str.* 423.

Remedy for an Escape.

By the common law, the sheriff and every gaoler ought to keep persons in execution, in *salva custodia*.
 3 Co. 44. And whether upon *mesne process*, or in execution, the plaintiff had no remedy, but by action on the case. 2 Inst. 382. 1 Roll. Abr. 99. l. 10.
 15. 2 Cro. 289. 2 Saund. 34. 2 Lev. 159.

By common law, sheriff to keep persons in execution in custody.

13 Ed. 1 c. 11. enacts, that servants, bailiffs, and all receivers which are accountable being found in arrear by auditors assigned by their masters, they shall be committed to gaol till they have satisfied the master; and let the sheriff or gaoler take heed, that they do not suffer him to go at large by *replegiare*, or otherwise without the assent of his master. And if he do, he shall answer to the master the damages, and the master shall have the recovery thereof by a writ of debt; and if the gaoler have not wherewithal his superior shall answer.

Servants, &c. found in arrear to be committed to gaol till they have satisfied the master: and sheriff not to suffer them to go at large.

By the stat. of 1 R. 2. c. 12. no warden of the Fleet shall suffer any prisoner there being judgment to go out of prison by bail nor by baston, without making gree to the parties of that whereof they were judged, unless it be by writ or command of the king; upon pain to lose his office; and if such warden be attainted, that he has suffered such prisoner to go at large, the plaintiffs shall have their recovery against the warden by writ of debt.

Superior.

Warden not to suffer any prisoner to go out of prison unless by writ.

By the equitable construction of the stat. 13 Ed. 1. the action of debt is given against sheriffs and by the 1 R. 2. c. 12. against the warden of the Fleet for escapes in execution, and the stat. of Rich. 2. extends to all gaolers and keepers of prisons, though they be infants or feme covert. 2 Inst. 382.

By the equitable construction of these statutes, debt lies against sheriffs for escapes.

Trespass on the case lies in cases of escapes on *mesne process*(a); but where the party is in execution, lies for escapes.

When case lies, and when debt lies for escapes.

(a) 5 Term Rep. 37.

debt lies under the before two statutes, and the jury in the latter case cannot give a less sum in damages than the creditor would have recovered against the prisoner, viz. the sum indorsed on the writ and sheriff's poundage. *Bonafous v. Walker*, 2 Term Rep. 126. But in the former case the plaintiff recovers only on the damages he has sustained, and if no damage be sustained, the plaintiff has no cause of action. 5 Term Rep. 37. *Planck v. Anderson*.

Debt lies as well for negligent as for a voluntary escape.

And plaintiff has election to bring debt or case.

If in custody on a cap. utlagatum.

Debt lies by 1 R. 2. c. 12. as well for a negligent as for a voluntary escape. *Stonehouse v. Mullins*, 2 Str. 873.

The plaintiff has his election to bring debt or case for an escape in execution. *Cro. Jac.* 283. 2 Bulstr. 321. *Cro. Eliz.* 767.

If a prisoner in custody on a *capias utlagatum* is suffered to escape, the plaintiff may either maintain an action *qui tam* against the sheriff, or debt in his own right. *Cro. Jac.* 361. 533. 619. *Cro. Eliz.* 877.

Husband and wife may join in action.

Husband and wife may join in the action, if one in execution at their suit or process out of a court of equity. 2 Str. 726. *Huggins v. Durham et Ux.*

An administratrix.

An administratrix may maintain this action in her own name on a judgment obtained by her as administratrix. 2 Term Rep. 126. *Bonafous v. Walker*.

Outlaw.

Case lies for escape of an outlaw on *mesne process* (but not debt). 2 Str. 901. *Cooke v. Champneys*.

Under a count for a voluntary escape.

Under a count for a voluntary escape, the plaintiff may give evidence of a negligent escape. 2 Term Rep. 126. *Bonafous v. Walker*.

Escape warrant.

By stat. 1 Ann. st. 2. c. 6. the sheriff shall be liable for an escape of any committed to him on an escape warrant.

Sheriff of every county to keep the gaol, and he is liable to answer for escapes,

The sheriff of every county shall have the keeping of the common gaol there (except such as are held by inheritance or succession). 19 H. 7. c. 10. Upon this statute, it was resolved, that grants of custodies

custodies of gaols lately made by H. 8. or after granted to divers persons, were utterly void, and that inasmuch as the custody of them belonged to the office of sheriff, who, being immediate officer to the king's court, shall answer for escapes and be subject to amerciamment, if he has not the body in court upon process, &c. and it is reason that he put in such keepers, for whom he will answer. 4 Rep. 34.

and be answerable for his keeper.

1 Andrews 345.

In civil actions, the sheriff is answerable for the escape of his bailiff or gaoler, so of his under-sheriff, if the prisoner be taken. Dalt. 484. cites 1 R. 2. c. 12. and 7 H. 4. c. 4. Fitz. 93. Br. Officer, 24 and 33. and 2 Inst. 382. 1 Roll. 94. l. 30. Hard. 34.

In civil actions, for escape of his bailiff or gaoler, liable.

If there be two sheriffs of the same place, and an action of escape be brought against them both, if one dies, the writ shall not abate; Cro. Eliz. 625. but the death may be suggested on the roll. 8 & 9 W. 3. c. 11. f. 7.

If there be two sheriffs and escape brought against both, writ not to abate on the death of one.

The judges will not adjudge a thing to be an escape by any strict construction. 3 Rep. 446. Boyton's Case.

Will not adjudge a thing to be an escape by strict construction. Surviving sheriff.

It lies against the surviving sheriff, when one of them dies. Cro. Eliz. 625.

By stat. 8 & 9 W. 3. c. 27. f. 11. the offices of the marshal of the king's-bench prison, and warden of the fleet shall be executed by the several persons to whom the inheritance belongs respectively in person, or their deputies, and for all forfeitures, escapes, &c. in their offices by such deputies, the persons in whom the inheritance is, shall be answerable.

Marshal and warden are liable for all escapes.

If a writ comes to the sheriff and he makes out his mandate to the bailiff of a liberty, who takes the party, and after suffers him to escape, an action lies against the bailiff of the franchise, and not the sheriff. Roll. Abr. 98. Noy 27.

When bailiff of liberty liable.

Of Gaols in Fee.

If he who has the custody of a gaol *in fee*, substitutes another for life, or at will, the action will be against him, for he has the *actual possession* of the office. 9 Co. 98. (a).

Mayor, &c.

So if an escape be out of the custody of mayor or bailiffs of a city, town, &c. which has a gaol, the action shall be against them, and not against the sheriff. 1 Roll. 99. l. 15.

Bailiff of a franchise.

So it shall be against the bailiff of a franchise, if the escape be by him. *Ibid.*

Sheriffs of London on plaint.

So against both the sheriffs of London, if the escape be after an arrest upon a plaint in the compter, of one of them, *Carth.* 145. or against the survivor, where one dies. *Cro. Eliz.* 625.

Old sheriff.

So against the old sheriff, if he omits to deliver any prisoner by indenture to the new. 2 Lev. 34.

Superior and inferior.

But an action shall not be against the *superior*, if the *inferior* be sufficient. 2 Inst. 382. But in all cases where the inferior is *insufficient*, debt lies against the *superior* for the escape. 2 Jon. 60. 2 Lev. 158. 9 Co. 98. (a).

If the inferior be insufficient.

If he be insufficient at the time of the action brought, though he was sufficient at the time of the commitment or escape; for that is the time most regarded. 2 Jon. 61. 2 Lev. 160.

Who is superior.

The *superior* against whom the action ought to be brought is he, who by his estate in his office, or by his authority without estate, has the power of putting in the inferior officer. 2 Jon. 61. As the duke of N. being marshal of England in fee, makes a deputy; he is the *superior*, and the deputy the inferior officer. 2 Inst. 382. 9 Co. 98. (b).

If a man who has the custody of a gaol in fee, grants it for three lives; he is the *superior*. 2 Inst. 382. 9 Co. 98. and the grantee the *inferior*. There cannot be two superiors within the flat. *Ibid.* The sheriffs of London are the *inferior*, the mayor and commonalty the *superior*. *Ibid.*

The

The dean and chapter of Westminster are the superior, and the bailiff the inferior. 2 Lev. 159.

So is the dean and chapter of Westminster.

So the lord of a franchise, who has a gaoler, is the superior, and shall answer for his gaoler. Sav. 11. 15. But there cannot be two superiors within the statute. 2 Inst. 382.

But debt does not lie against the superior upon a general declaration for an escape; but he ought to be specially charged for the insufficiency of the inferior. 2 Lev. 160.

Not against superior on general declaration.

So if a man has the custody of a gaol in fee in reversion, after a grant thereof for life, rendering rent, which was not made by him, the reversioner is not superior, 2 Jon. 61. for the superior is not such in respect of the rent, or the reversion; but in regard, that the inferior officer derives his estate from him.

In reversion,

If proceedings are against the marshal or warden for an escape, a bill must be filed against them in their respective courts; but if a sheriff is sued, process must be directed to the coroner; if against the late sheriff, it is to be directed to the present sheriff.

A bill must be filed against marshal, &c.

In debt for an escape the indorsement of *non est inventus* on the *ca. fa.* is sufficient evidence of its having been delivered to the sheriff. Cow. Rep. 63. And a legal arrest must be proved. Ibid.

Evidence of delivery of writ.

The bailiff's name indorsed on the writ is sufficient evidence that he was authorised by the sheriff to arrest without proof of the warrant. Ibid. 66.

Of bailiff.

Debt for an escape against the marshal for 2019 l. The first count stated that defendant voluntarily suffered one Rybot who was in custody at the plaintiff's suit for 1009 l. 10 s. to escape. The second count was for a negligent escape. Pleas—1. *Nil debet.* 2. As to the 2d count, that Rybot without the privity and consent of the defendant, and against his will escaped, &c. and that the defendant freshly and diligently pursued Rybot and retook him, and had and detained him in execution for the damages, &c. at the suit of the plaintiff, and then

In debt against the marshal for an escape, the jury cannot give a verdict sum than the creditor would have recovered against the prisoner. An administratrix may maintain an action in her own name against the marshal for the escape of a prisoner who is

in execution on a judgment obtained by her as administratrix. A voluntary return of a prisoner after an escape, before action brought, is equal to a retaking on a fresh pursuit; but it must be pleaded. Under a count for a voluntary escape the plaintiff may give evidence of a negligent escape, and the defendant may plead a retaking on a fresh pursuit to such a count, without traversing the voluntary escape. An escape from the rules of the K. B. prison without the marshal's knowledge is not a voluntary escape.

and there continually from thenceforth, until now detained and still detains him for the cause aforesaid. 3. As to the second count, that *Rybot* escaped without the privity or consent, and against the will of the defendant, and before the defendant had any notice of the escape, to wit, on the 4th *November*, in the 27th year, the said *Rybot* into the defendant's custody, without the knowledge of the defendant, returned and continually after such return hath been detained in execution, &c. Replication, that the defendant did not freshly and diligently pursue *Rybot*, in order to retake him, &c. And as to the 3d plea, that *Rybot* was not continually after his return detained in the defendant's custody in execution. It appeared at the trial before *Buller J.* that *Rybot* had been taken in execution on a judgment obtained against him by the plaintiff as administratrix of her husband, and regularly committed to the custody of the marshal. The *ca. sa.* was indorsed to levy 344 besides sheriff's fees. *Rybot*, who had the liberty of the rules of the prison, was proved to be out of them on 3 several days, the last of which was on the 3d of *November*; but on the defendant's hearing that the prisoner had escaped beyond the rules, he was put in close custody on the 4th of *November*, before the action was brought. The jury found a verdict for 344*l.* Motion for a new trial. On the ground that the action ought to have been brought by plaintiff as administratrix. And, 2dly, by the evidence this appeared to be a negligent, and not a voluntary escape, and therefore could not be given in evidence under the first count. With respect to the first question, the court held, that the instant the plaintiff recovered, it became a debt due to her on record, and was assets in her hands for which it was not necessary to declare as administratrix. They also held it to be a negligent and not a voluntary escape. *Buller J.* then said, the escape is not voluntary unless it be with the consent or by the default of the marshal: but his allowing the rules of the prison is no fault in

in him, because the law has given a sanction to it; and it cannot be inferred from thence, that he consented to the prisoner's escape. As this record stands, the plaintiff is entitled to a verdict, and so far it is right; because the marshal on the *general issue* could not give evidence of *fresh pursuit*. But at the trial the law was mistaken by the counsel on both sides, and by myself. It was contended on the part of the plaintiff, that this was a voluntary escape, which was denied by the defendant's counsel, both of them going on the mistaken idea, that a voluntary escape was material to be proved on the *first issue*: At first, I fell into the same mistake, but on recollecting the case in *Ventris*, I ruled otherwise. Now in a case of this sort, where both parties were in an error at the trial, there is no objection to the court's interposing to let them into the justice of the case, which can be only effected by granting a new trial, with liberty to amend the pleadings. A question has been raised whether the plaintiff was entitled to recover the whole penalty, and to levy, under that, the poundage and fees of execution. I am clearly of opinion that the plaintiff was not entitled to recover the whole of the penalty. He cannot recover more than he could have recovered against the original debtor; and the debtor would in this case have been entitled to have been discharged on paying what was really due. Then as to the poundage, it is part of the debt, and the prisoner could not have been discharged out of execution without paying the poundage, therefore if the plaintiff was entitled to recover at all, he was entitled to recover the poundage as well as the debt. Rule absolute on payment of costs, with liberty for both parties to amend the pleadings. *Bonafous v. Walker*, 2 Term Rep. 126. 1 Ven. 211.
217.

Sheriff's Defence.

If the prison
takes fire, sheriff
excused.

IF the prison takes fire, by means whereof the prisoners escape, this shall excuse the sheriff, and he may plead it. 3 E. 6. 66. 15. Roll. Abr. 808.

So if it be broke
by the king's
enemies.

So, if the prison is broke by the *king's enemies*, this shall excuse the sheriff, for he can have no remedy over against them. 4 Co. 84. Roll. Abr. 808.

But if by rebels,
&c. the king's
subjects.

But if the prison was broke by rebels and traitors, the king's subjects, this shall not excuse him, for he may have his remedy over against those. *Ibid.*

Fresh pursuit
and retaken be-
fore action
brought, excuses
the sheriff.

If a prisoner in execution escapes without the assent of the sheriff, &c. and he make fresh pursuit and retake him *before any action brought against him*, this shall excuse the sheriff. Cro. Jac. 657. Jon. 144. Roll. Abr. 803 2 Str. 873.

But not after.

But if he retake him *after the action commenced against him*, this shall not excuse him; nor can it be pleaded to an action that *was well attached before*. Roll. Abr. 808, 809. Jon. 145. Cro. Car. 657.

If fresh suit is
made, and sheriff
retakes before
action.

So if a prisoner escape, and several days after but as soon as the sheriff has notice of it, he makes fresh suit, and retakes him *before an action brought*, this shall excuse him. Roll. Abr. 809.

Plea.

So the sheriff may plead, that the prisoner escaped the 16th day of *December*, and that he made fresh suit, and retook him the 17th day of *December*, and retained him in execution; for it is sufficient, if he did all he could, though he lost sight of him in the night or otherwise. Roll. Abr. 809. Dalt. Sheriff, 562.

How to plead a
fresh pursuit and
recaption.

“ That no *retaking on fresh pursuit* shall be
“ given in evidence on the trial of any issue in an
“ action of escape against the marshal or warden,
“ or their respective deputy or deputies, or against
“ any other keeper or keepers of any other prison
“ or

“ or prisons, unless the same be specially pleaded; nor
 “ shall any special plea be taken, received or allowed,
 “ unless oath be first made in writing by the marshal or
 “ warden, or their respective deputy or deputies, or by
 “ such other keeper or keepers of any other prison or
 “ prisons against whom such action shall be brought,
 “ and filed in the proper office of the respective courts,
 “ that the prisoner for whose escape such action is
 “ brought, did, without his consent, privy or know-
 “ ledge, make such escape; and if such affidavit shall
 “ at any time afterwards appear to be false, and
 “ the marshal or warden, or other keeper or keep-
 “ ers of any other prison or prisons, shall be con-
 “ victed thereof by due course of law, such marshal
 “ or warden, or other keeper or keepers of any
 “ other prison or prisons, shall forfeit the sum of
 “ 500*l.*” 8 & 9 *W. 3. c. 26. s. 6.*

Affidavit to be
 annexed to the
 plea.

In case of *voluntary* escapes, the gaoler cannot re-
 take the prisoner. 2 *Wils. 295. Wilmot C. J.*

But in the case of *negligent* escapes, the gaoler
 may retake the prisoner. 2 *Sir. 908.*

Plea.

To the action on the case for the escape the
 defendant may plead not guilty. *Com. Dig. 222.*
 2 *Wils. 294.*

That he was rescued after an arrest on mesne
 process. *Lut. 130. 3 Lev. 46.*

To an action of debt, *nil debet.* 2. And to an
 action for a *negligent* escape, that he escaped against
 his will and that he made *fresh pursuit* and retook
 him, before action commenced. 2 *Term Rep. 126.*

Sheriff's Redress.

If the party in custody, on *execution* or *otherwise*, escapes, the sheriff may have trespass on the case
 against him, for the sheriff is liable over to the plaintiff in the first action. *Cro. Eliz. 234.*
 Sheriff may have
 action against
 the escaper.

So

So it is said if he voluntarily escape; but see the next case.

Action for money paid will not lie at the suit of the warden in consequence of a voluntary escape, though such escape was permitted through ignorance of the law.

So in an action against a prisoner for an escape, *Yates J. ruled*, that if a sheriff voluntarily permits a prisoner to escape, and he in consequence is obliged to pay the debt, he may maintain an action for money paid, for he is discharged as against the plaintiff in the action. *Morris v. Berkeley, Worc. Lent. Ass. Esp. N. P. 612. Eyles v. Faikney, Peake's Cas. N. P. 144. S. P.* But where defendant was in custody of the warden on mesne process att. of *Holland*, a written authority came from *Holland* to the warden to discharge defendant, the warden's deputy having doubts as to the authenticity of the discharge, applied to *Holland* to know if it was his hand-writing. *Holland* said he had signed the paper, but that he had been imposed on by the defendant, and therefore countermanded the authority. The defendant insisted that the authority to discharge him was irrevocable, and threatened the warden with an action if he detained him. The deputy of the warden discharged him, thinking that *Holland* could not revoke his order. Afterwards an action was brought against the warden in the *C. P.* for the escape and recovered 300*l.*, to recover which money he brought an action against the defendant for money paid to his use. The cause was tried before *Lord Kenyon*, who said that the warden had been guilty of a breach of his duty in permitting defendant to escape, and therefore ought not to be permitted to come as plaintiff in a court of justice, and ordered him to be called. Motion for a new trial; and counsel cited *Moor 597. Cro. Eliz. 53. Godb. 125.* with the case of *Morris v. Bulkley*, tried before *Yates J.* in favor of the rule; against it, *Erskine* contended, that to make an escape voluntary it was not necessary that the gaoler should have a corrupt intention; if it was by his consent, it was sufficient. No escape could be called merely negligent unless effected by the pure art of the prisoner, without the consent and against the knowledge of the gaoler *ex dolo malo non oritur actio*. Court said the rule must be

be discharged. *Eyles v. Faikney, K. B. Easter Term 3 Geo. 3. Peake's Cas. N. P. 144.*

A Sheriff's officer who discharges a defendant on payment of the sum sworn to and costs, and is afterwards obliged to pay the interest, which was insisted on, may recover from the defendant as money paid to his use. *Cordron against Messarins, Peake's Cas. N. P. 143.*

A Sheriff's officer who pays debt and costs may recover it.

In Criminal Matters.

AS all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it; whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and flies himself from it by any artifice, before such time as he is delivered by due course of law, is guilty of an high contempt, punishable with fine and imprisonment. 2 *Haw.* 122.

Escape by the party himself.

That wherever any person hath another lawfully in his custody, whether upon an arrest made by himself or another, he is guilty of an escape, if he suffer him to go at large, before he hath discharged himself of him, by delivering him over to some other, who by law ought to have the custody of him. 2 *Haw.* 138. And the law is generally the same, in relation to *escapes* suffered by *private persons*, as by *officers*. *Ibid.*

Escape by a private person.

To make it an escape, there must be an actual arrest; and therefore if an officer having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape. 2 *Haw.* 129.

Escape from an officer, there must be a previous arrest.

Such arrest also must be justifiable; for if it be either for a supposed crime, where no such was committed, and the party never indicted nor appealed, or for such a slight suspicion of an actual crime,

And justifiable, it for a supposed crime where none committed and party never indicted, nor ap-

pealed, or an irregular *mittimus*, if prisoner escapes, the officer is not guilty of an escape.

And for a criminal offence.

And detained only for fees, not criminal to suffer esc. pr.

crime, and by such an irregular *mittimus*, as will neither *justify* the *arrest* nor *imprisonment*, the officer is not guilty of an escape, by suffering the prisoner to go at large. 2 *Haw.* 129.

And as the imprisonment must be justifiable, so it must also be for a criminal offence. *Ibid.*

Also if a prisoner be acquitted and detained only for his fees, it will not be criminal to suffer him to escape, though the judgment were, that he be discharged *paying his fees*, so that they be paid, the first imprisonment continuing lawful as before; for inasmuch as he is detained, not as a criminal, but only as a debtor, his escape cannot be more criminal than that of any other debtor: yet if a person convicted of a crime, be condemned to imprisonment for a certain time, and also *till he pay his fees*, and he escape after such a time is elapsed, without paying them, perhaps such escape may be criminal, for that it was part of the punishment, that the imprisonment be continued till the fees should be paid; but it seems, that this is to be intended where the fees are due to *others*, as well as to the *gaoler*, for otherwise the *gaoler* will be the only sufferer by the escape, and it will be harsh to punish him for suffering an injury to himself only, in the non payment of a debt in his power to release. *Ibid.* 129, 130.

Too much liberty.

To suffer a prisoner to have greater liberty than the law allows, is an escape. If a gaoler or other officer shall license his prisoner to go abroad for a time, and to come again, this is an escape, though he return again. *Dalt. c.* 159.

Losing sight of prisoner, an escape.

If the gaoler so closely pursues the prisoner who flies from him, that he retakes him, without losing sight of him, the law looks on the prisoner so far in his power all the time, as not to adjudge such a flight to amount at all to an escape; but if the gaoler once lose sight of the prisoner, and afterwards retake him, he seems to be guilty in strictness, of an escape. And if he kill him in the pursuit, he is in like manner, guilty of an escape, though

And if he kill him in the pursuit.

though he never lost sight of him, and could not otherwise take him. 2 *Haw.* 130.

There can be no doubt, but that wherever an officer, who hath the custody of a prisoner, charged with, and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him, either from his trial or execution, he is guilty of a *voluntary escape*, and thereby involved in the guilt of the crime of which the prisoner was guilty and stood charged with. *Vide 2 Inst.* 592. And it seems to be the opinion of Sir *Matthew Hale*, that in some cases an officer may be adjudged guilty of such escape, who had not such intent, but only means to give his prisoner that liberty which by the law he hath no color of right to give him. 2 *Haw.* 130.

Voluntary and negligent escapes.

It seems clear, that every indictment for an escape whether negligent or voluntary, must expressly shew, that the prisoner was actually in the defendant's custody for such a crime: and that he went at large: and if for a voluntary escape, that the defendant feloniously and voluntarily suffered him to go at large: and must set forth, not the felony in general, but the particular kind of felony: but it seems questionable, whether such certainty, as to the nature of the crime, be necessary in an indictment for a negligent escape; for that it is not material in this case, whether the person who escaped were guilty or not. *Haw.* 133. 229.

Indictments

If the prisoner be of record in a court, and the gaoler being called, cannot give an account where he is, this is a conviction of an escape; but it seems not a conviction of a voluntary escape, unless the gaoler confesseth it: and the gaoler may be fined in such a case, but not convicted of felony, without indictment or presentment. 1 *H. H. P. C.* 599. 603.

The gaoler on trial, not producing the prisoner, a conviction.

That the keeper who voluntarily suffers the escape, cannot be arraigned for such an escape as for felony, until the principal be attainted, for that the felony of the prisoner shall not be tried between

Felony to be tried before the escape.

the king and the keeper, because the prisoner is a stranger thereto; yet he may be indicted and tried, for it as a misprison before the attainder of the principal. 2 *Haw.* 135. 2 *Inst.* 591, 592.

Negligent escape.

Whoever *de facto* occupies the office of gaoler, is liable to answer such an escape; and that it is no way material whether his title to the office be legal or not. 2 *Hawk. P. C.* 135. A sheriff is as much liable to answer for an escape suffered by his bailiff, as if he had actually suffered it himself, and the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him: but if the gaoler who suffers an escape, have an estate for life or years in the office, it is not agreed how far he in reversion is liable to be punished. 2 *Hawk. P. C.* 135, 136.

Punishment of escape, before arrest.

1. If a felon escapes before arrest, it is not punishable in him as felony; but for the flight he forfeits his goods, when presented. *Hale's Pl.* III.

Of escape by a private person.

2. If a private person arrest a felon, and he escape by force from him, the township shall be amerced, but it seems, it excuseth the party, because he cannot raise power to assist him; but if a constable or other officer hath the custody of a prisoner, bringing him to the gaol, it seems that a simple escape by the rescue of the prisoner himself doth not wholly excuse him, because he may take sufficient strength to his assistance. 1 *H. H.* 601.

Of a negligent escape.

3. Wherever a person is found guilty upon an indictment or presentment of a negligent escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence. 2 *Haw.* 136. 139. 1 *H. H.* 600. 604.

Better opinion.

And it seems to be the better opinion, that the sheriff is as much liable to answer for a negligent escape suffered by his bailiff, as if he had actually suffered it himself, and the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent

glibent escape, his principal must answer for him.
2 *Haw.* 135.

Note. Mr. *Hawkins*, although he is one of the most accurate of all writers, yet has inserted in this place certain penalties for escapes, which were expired above 200 years before. 2 *Haw.* 137.

If a prisoner for felony break the gaol, this seems to be a negligent escape in the gaoler, because there wanted either that due strength in the gaol, that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it; and therefore it is lawful in the gaoler to hamper them with irons to prevent their escape; for if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to take them that escape.
1 *H. H.* 601.

4. It seems to be generally agreed, that a voluntary escape suffered by an officer, amounts to the same kind of crime, and is punishable in the same degree, as the offence of which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass. 2 *Haw.* 134.

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given and the party dying not till after the escape; but the officer may be fined to the value of his goods. *Dalt.*

Also a voluntary escape suffered by one who wrongfully takes upon him the keeping of a gaol, seems to be punishable in the same manner, as if he was never so rightfully entitled to such custody; for that the crime is in both cases of the same ill consequence to the public: and there seems to be no reason that a wrongful officer should have more favour than a rightful, and that for no other reason but because he is a wrongful one. 2 *Haw.* 134.

But it seemeth to be clear that no one is punishable as for felony, for the voluntary escape of a felon, but the person only who is actually guilty

Voluntary escape.

If act done is not felony.

Principal only punishable.

of it; and therefore that the principal gaoler is only fineable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another. 2 *Haw.* 135.

Felony in gaoler but not his principal.

And therefore, altho' in all civil causes, the sheriff is to be responsible, or the gaoler, at election, yet if the gaoler do voluntarily suffer a felon in his custody to escape; this, inasmuch as it reacheth to life, is felony only in the gaoler, that was immediately trusted with the custody, and not in the sheriff. 1 *H. H.* 597.

Escape must be voluntary in him who permitted it.

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high sheriff, tho' it were such in the gaoler, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him, in trusting such a person with the custody of his prisoners, that would be false to his trust, and therefore the sheriff shall pay, but not corporally suffer for the miscarriage of his gaoler. 1 *H. H.* 597, 598.

Clergy.

But although the felony for which a man is committed be not within clergy; yet the person who voluntarily suffers him to escape shall have the benefit of clergy. 1 *H. H.* 599.

Where a person assisting a prisoner to escape shall be deemed guilty of felony.

and where deemed a misdemeanor.

By the 16 *Geo. 2. c. 31.* If any person shall assist any prisoner to attempt his escape from any gaol, though no escape be actually made, if such prisoner was then attainted or convicted of treason or felony (except petty larceny), or lawfully committed, or detained in any gaol, for treason or felony (except petty larceny), expressed in the warrant of commitment; he shall be guilty of felony, and be transported for seven years: and if such prisoner was then convicted of, or detained in gaol for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment, or was then in gaol for debt amounting to 100 *l.*, he shall be guilty of a misdemeanor, and be liable to fine and imprisonment.

And if any person shall convey, or cause to be conveyed, any disguise, instrument or arms, to any prisoner in gaol, or to any other person there for his use, without consent of the keeper; such person, altho' no escape or attempt be actually made, shall be deemed to have delivered such disguise, instrument or arms, with an intent to assist such prisoner to escape or attempt to escape; and if such prisoner then was attainted or convicted of treason or felony (except petty larceny), or lawfully detained in gaol for treason or felony (except petty larceny) expressed in the warrant of commitment, he shall be guilty of felony and be transported for seven years; but if the prisoner was then convicted or detained for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment, or for debt amounting to 100 l. he shall be guilty of a misdemeanor, and liable to fine and imprisonment. *Ibid.*

If any person conveying any disguise, instrument &c. to help an escape without the knowledge of the keeper be attainted of treason or felony; the offender shall be deemed guilty of felony and be transported.

But if convicted or detained for petty larceny or for debt amounting to 100 l. guilty of a misdemeanor.

And if any person shall assist any prisoner to attempt to escape from any constable, or other person, who shall have the lawful charge of him, in order to carry him to gaol, by virtue of a warrant of commitment of treason or felony, (except petty larceny,) or if any person shall assist any felon to attempt his escape from on board any boat or vessel, carrying felons for transportation, or from the contractor for the transportation of such felons, or his agents, he shall be guilty of felony, and be transported for seven years. Offence to be prosecuted within a year. *Ibid.*

To assist any person to escape from a constable being charged with treason or felony, or from any boat, &c. carrying felons for transportation, the offender deemed guilty of felony, and to be transported.

By the st. *Winton*, 13 Ed. 1 c. 4. If murder or homicide be done in a walled town, &c. and the offender escapes, the town shall be amerced. 7 Co. 7. a. So London was. *Cro. Car.* 252.

In criminal cases, town amerced.

By st. 5 Ed. 3 c. 8. A marshal who permits the escape of *indictes* or *appellees* in his custody, by bail, or without bail, shall be imprisoned for half a year, and ransomed at the will of the king.

A marshal permitting an escape by bail, imprisoned.

By the stat. 19 H. 7. c. 10. A fine for a negligent escape of any indicted for *high treason*, shall

A fine for negligent escape of a person indicted for high treason, &c.

be one hundred marks at least; if committed for suspicion of high treason forty pound; if indicted for murder or petit treason twenty pound, if for suspicion of these or indicted for other felony, ten pound, if not indicted five pound. And if the gaoler be not sufficient, the sheriff shall answer for his neglect. *Hawk. 113.*

Replevin.

Sheriff's Duty.

What a replevin lies for.

REPLEVIN, is a re-delivering to the owner, by the sheriff, his cattle or goods distrained upon any cause, upon surety that he will pursue the action against him that distrained; and if he pursue it not, or if it be adjudged against him, then he who took the distress shall have it again, and for that purpose may have a writ *de retorno habendo*. *Co. Lit. 145. b.*

From whence derived.

Replegiare is compounded of *re* and *plegiare*, as much as to say, to re-deliver upon pledges or sureties; and in the *stat. of Marlbridge*, *deliberare*, is used for *replegiare*. *Co. Litt. 145. b.*

For what it does not lie.

It does not lie of *hounds, hawks, monkeys, apes, thrushes, popinjays, &c.* which are *feræ naturæ*, for the property is not properly known, and yet trespass lies thereof; and so of a mastiff. *Br. Property. pl. 44. 12 H. 8. 4 Br. Replevin, 64. 12 H. 8. 3. nor of conies. Godb. 124. pl. 144. nor of charters. Br. Grant, pl. 84. 4 H. 7. 10. for they are inheritances and belong to the heir.*

For what it does lie.

But it lies of such things in which he has a qualified property, though he has not therein an absolute property, as of things wild by nature, which are made tame, or are reclaimed, so long as they continue in that condition, they belong to the person who has the possession of them. *2 Roll. Abrid. 430. Godb. 124. It lies of a swarm of bees. F.N. B. 68. of iron belonging to a mill, ibid. 68. of a foal, calf, &c. 1 Sid. 82. Bro. 41. For a ship, so of the sails. Ray. 232. Moor 110.*

If

If the beasts of divers several men be taken, they cannot join in a replevin, but every one must have a several replevin. *Co. Litt. 145. b.* When to have a separate replevin.

Although one distress is put into several pounds, yet one replevin shall serve, otherwise if it be in divers counties, or several franchises, where there ought to be several replevins. *Noy 52.* When one replevin does.

Replevin lies of all goods and chattels, whether they be live cattle or dead chattels. *F. N. B. 68. D.* It lies of all goods, &c.

He who brings a replevin, ought to have the property of the cattle or goods in him. *Co. Litt. 145. b.* but a special property is sufficient. *Ibid.* As if goods be in his custody as a pledge, or for the manuring of his land. *Ibid.* So a lord may have a replevin for the goods of his villein; for his action of replevin amounts to a claim, and vests the property in him. *Ibid. F. N. B. 69. F.* A husband for the goods of his wife *dum sola. Ibid. K.* An executor or administrator for the goods of his testator. *1 Sid. 81.* But he must have property in him.

And replevin lies against him who takes the goods, and also against him who commands the taking. *2 Rol. 431. l. 5.* or against both. *Ibid.* So it lies against him who takes damage feasant, if he detains after amends tendered. *F. N. B. 19. G.* It lies against him who takes the goods.

Replevin does not lie against him, who takes goods beyond sea, though he afterwards import the goods hither. *Show. 91.* Nor does it lie for goods taken in execution, nor for goods seized for a debt due to the king, without his command or the barons of the exchequer. *Mod. 672.* But not if taken beyond sea.

So it does not lie for goods seized by a warrant from a justice of peace, upon conviction for destruction of game. *2 Mod. 208, 9.* Nor for goods distrained on a conviction (for deer-stealing). *Str. 1184.* And if the under-heriff grants it, an attachment shall go against him. *Ibid.* Nor for goods distrained for a fine imposed on an officer by commissioners of land-tax. *Bunb. 14.* Nor in execution.

The regular way of contesting a distress taken wrongfully, and without sufficient cause, is by The mode of contesting the regularity of a

distress is by replevin.

The old common law was by writ.

But being too tedious.

The stat. directs the sheriff to deliver the distress taken without let or gainfaying.

Sheriff may deliver by parole or precept, the distress.

And may take a plaint for that purpose out of his county-court.

Sheriff to make four deputies to take replevins.

He ought, when he makes replevin, to take two kinds of pledges.

action of *replevin*, and formerly the party had no other process by the old common law, than by a writ of *replevin*, *replegiare facias* which is issued out of chancery, commanding the sheriff to deliver the distress to the owner, and afterwards to do justice in respect of the matter in dispute, in his own county-court. But this being a tedious method of proceeding, the beasts or other goods were long detained from the owner, to his great loss and damage. For which reason the statute of *Marlbridge*, 52 H. 3. c. 21. directs, "that if the beasts of any person be taken, and wrongfully with-holden, the sheriff after complaint made to him thereof, may deliver them without let or gainfaying of him that took the beasts, if they were taken out of liberties; and if the beasts were taken *within any liberties*, and the *bailiff of the liberty will not deliver them*, then the sheriff, for default of those bailiffs, shall cause them to be delivered."

By this statute, the sheriff upon a plaint made unto him without writ, may, either by parole or precept, command his bailiff to deliver the beasts or goods, that is, to make replevin of them; and the sheriff may take a plaint out of the county-court, as it would be inconvenient, and against the scope of the statute, that the owner, for whose benefit the statute was made, should tarry for his beasts, until the next county-court, which is holden from month to month. And by this act, the sheriff may hold plea in the county-court or *replevin* by plaint, though the value be of 20 l. or above.

And for the greater ease of the parties, by stat. 1 Ph. & M. c. 12. it is provided, "*That the sheriff shall make at least four deputies in each county, for the sole purpose of making replevins.*" And the statute gives a penalty of 5 l. a month for every month he neglects.

When the sheriff makes replevins, he ought to take two kinds of pledges, 1st, *That the party replevying will pursue his action against the distrainer,*
for

for which purpose he puts in *plegias de prosequendo*, pledges to prosecute. And 2d, That if the right be determined against him, he will return the distress again; for which purpose he is bound to find pledges to make return, if return shall be adjudged, *plegias de retorno habendo*, &c.

And the sheriff may issue his replevin at any time; for it would be inconvenient to make the parties wait till the county court-day. *Co. Litt. 145. b.*

By stat. *West 2. 13 Ed. 1. c. 2.* " Sheriffs or bailiffs from thenceforth shall not only receive of the plaintiff pledges for the pursuing of the suit, before they make deliverance of the distress, but also for the return of the beasts, if return be awarded; and if any take pledges otherwise, he shall answer for the price of the beasts, and the lord that distrains, shall have his recovery by writ, that he shall restore to him so many beasts or cattle; and if the bailiff be not able to restore, his superior shall restore."

The statute directs pledges for pursuing the suit,

and return of the beasts.

In the construction hereof, it has been resolved, That if the sheriff returns insufficient pledges, he shall answer according to the statute, for insufficient pledges, are no pledges in law; and such pledges must not only be sufficient in estate, viz. capable to answer in value, but likewise sufficient in law, and under no incapacity; and therefore, infants, feme coverts, persons outlawed, &c. are not to be taken as pledges, nor are all persons politic, or bodies corporate. *Co. Litt. 145. 2 Inst. 340. 10 Co. 102.*

In construction hereof, it has been resolved, that if he takes insufficient pledges, he shall answer.

Infants, &c., not to be taken.

And for the greater security of persons distraining for rent, by stat. 11 Geo. 2. c. 9. it is enacted, " That sheriffs, and other officers having authority of granting replevins, shall in every replevin of a distress for rent, take in their own names, from the plaintiff and two sureties, a bond in double the value of the goods distrained, (such value to be ascertained by the oath of one or more witnesses not interested, which oath the person granting such replevin is to administer,) and condition for prosecuting the suit with effect

Sheriffs, &c., having authority to grant replevins, shall for distress, if a rent, take bond in their own name from the plaintiff, and two sureties, in double the value of the goods.

Conditioned for prosecuting the

and

suit with effect,
and for return
of the goods if
awarded.

And shall assign
such bond with-
out stamp, in
presence of two
witnesses;

and if bond
forfeited, the
avowant, &c.
may bring an
action in his own
name, and court
may by rule,
give relief.

When may be
assigned.

When not as-
signable.

Sheriff obliged
to grant reple-
vins, and officer
who takes the
goods is not
liable to trespass,
unless, &c.

Misbehaviour by
sheriff, &c. sub-
ject to K. B.

The end of dis-
tress, is to com-
pel a satisfaction.

“ and without delay, and for returning the goods,
“ in case a return shall be awarded, before any de-
“ liverance be made of the distress; and such she-
“ riff or officer taking such bond, shall at the re-
“ quest and costs of the avowant or person mak-
“ ing consuance, assign such bond to the avow-
“ ant, &c. by indorsing the same, and attesting
“ it under his hand and seal in the presence of two
“ witnesses, which may be done without any
“ stamp; provided the assignment be stamped be-
“ fore any action brought thereon; and if the
“ bond be forfeited, the avowant, &c. may bring
“ an action thereupon in his own name; and the
“ court may, by rule, give such relief to the parties
“ upon such bond, as may be agreeable to justice;
“ and such rule shall have the effect of a defeaz-
“ ance.”

The bond may be assigned, if the plaintiff in
replevin do not appear at the county-court next
after the giving the bond: and he may sue on
the bond as assignee of the sheriff in the superior
courts, though the replevin be not removed out
of the county-court. *Dias v. Freeman. 5 Term
Rep. 195.*

If distress be made *not for rent*—the bond is not
assignable, but you may apply to the sheriff for
the bond, and to be at liberty to sue in his
name.

The sheriff is obliged to grant replevins in all
such cases, as they are allowed of by law; and the
officer who takes the goods by virtue of a replevin,
issuing for what cause soever, is not liable to an
action of trespass, unless the party in whose pos-
session the goods were, claims property in them.
And that in all cases of misbehaviour by the sheriff
or other officers in relation to replevins, they are
subject to the controul of the king's superior courts,
and punishable by attachment for such misbehavi-
our. *Garth. 381.*

As the end of all distresses is, to compel the
party distrained upon to satisfy the debt or duty
owing

owing from him, this end is as well answered by such sufficient sureties, as by retaining the very distress, which might frequently occasion great inconvenience to the owner; and that the law never wantonly inflicts.

Answered by taking sufficient pledges.

If the sheriff neglects to take a replevin bond, the court will not grant an attachment against him, but leave the party to his action against the sheriff. *Rex v. Lewis*, 2 Term Rep. 617.

Sheriff neglects to take a bond.

The sheriff, on receiving such security, is immediately to make his precept, directed to his officers, commanding them to replevy, and cause to be delivered the cattle, goods or chattels, so taken into the possession of the party so distrained upon: and if the distress be conveyed into any house, park, castle, or other place of strength; and the party who distrains, refuses to deliver them to be replevied, the sheriff may take the *posse comitatus*, and on request and refusal, may break open the same, and make deliverance. Stat. Westm. 1. 3 Ed. 1. c. 17.

Sheriff receiving security, is to make precept to his bailiff to deliver.

If distress conveyed into a place of strength, &c. and refusal to deliver, he may take posse comitatus.

If the sheriff be shewn a stranger's goods, and he takes them, trespass lies. 2 Rol. Abr. 552. Comb. 596. Were it not so, it would be in the power of the sheriff to strip a man's house of all his goods; but *Keilw.* 119. says, it lies more properly against the person who shews the goods.

If shewn a stranger's goods, trespass lies, if he take them,

He cannot break an inclosure and enter, where he may enter by the open gate. 20 H. 6. 28. 2 Roll. Abr. 552.

Cannot break an inclosure, if there is an open gate.

He may return, that no person came to shew, &c. or a delivery; 1 Lord Ray. 613. 1 Litt. 581. but not that the defendant, *non cepit*, the cattle. *Ibid.*

May return, that no person came to shew, &c.

If the plaintiff in replevin proceeds before the sheriff in his county-court, if any thing touching the freehold comes in question, the sheriff can proceed no further, nor can any such proceeding be carried on in the hundred court or court-baron. Co. Lit. 145. So where the king is party, or the taking is in right of the crown, the sheriff is to surcease.

If the freehold comes in question, the sheriff can proceed no further.

In these cases, removal must be by record, fac. le quel. and how the sheriff is to act.

If the plaintiff be nonsuit before issue joined.

Court to award an inquiry.

Entry of the plaint in replevin.

surcease. *Brown. 33.* Therefore, in these cases, the plaint must be removed into one of the courts above, by *recordari facias loquelam*; if a court of record, by *certiorari*, &c. and it is said, that the writ of *recordari* must be openly read, and allowed in the same court, to the end that notice may be given thereof to the plaintiff in replevin, that he may appear at the day of the return thereof, and declare against the taker of his cattle, &c. otherwise, the taker will have a return thereof.

By stat. 17 Car. 2. c. 7. If plaintiff shall be nonsuit before issue joined in replevin for rent, the defendant making a suggestion in nature of an avowry, or cognizance, for such rent, to ascertain the court the cause of distress, the court, upon his prayer, shall award a writ to the sheriff of the county where the distress was taken, to inquire by the oaths of 12 good and lawful men of his bailiwick, touching the sum in arrear at the time of such distress taken, and the value of the cattle and goods distrained; and thereupon the sheriff shall inquire of the truth of the matters contained in such writ, by the oaths of 12 good and lawful men of his county, and upon the oath of such inquisition, the defendant shall have judgment to recover such rent, &c. N. B. 15 days notice is to be given to the plaintiff of the sitting of such inquiry.

Sec. 3. gives the like remedy to the avowant upon a judgment given for him upon demurrer.

Surry, } At my county court, held at, &c. the
to wit. } day of in the 39th year of
the reign of our sovereign lord George the Third,
by the grace of God of Great Britain, France and
Ireland, king, defender of the faith, &c. before
A. E., K. E., P. K., and J. S., suitors of the said
court, (amongst other things,) it is entered,
Surry, to wit, G. A. complains of H. H. of a
plea of taking and unjustly detaining his goods and
chattels, as well for prosecuting, as for returning
the same goods and chattels, if return thereof shall
be adjudged, are H. G. of, &c. plumber, and
R. H. of, &c. glazier.

Know

Know all men by these presents; That we Bond in replevin.
G. A. of in the county of gent.
 and *J. B.* of the same place, gent. are held, and
 firmly bound to *G. M.* esq; sheriff of the county
 aforesaid, in the sum of 100 *l.* of lawful money of
Great Britain, to be paid by the said *G. A.* and
J. B. or their certain attorney, executors, admin-
 istrators, or assigns, for which payment, to be
 well and truly made, we bind ourselves, and each
 of us binds himself, for the whole, and in gross,
 our heirs, executors, and administrators, firmly
 by these presents. Sealed with our seals. Dated
 the day of 1799.

The condition of this obligation is such, that Condition.
 if the above-bounden *G. A.* do appear at my next
 county-court, to be holden for the county of
 at on the day of
 next, and do prosecute there with effect his suit,
 which he hath commenced against *H. H.* for the
 taking and unjustly detaining of two oxen, &c.
 (here set forth the goods distrained,) the cattle,
 goods and chattels of him the said *G. A.* and to
 make return of the said cattle, goods and chattels,
 if return of the same shall be adjudged; that then
 this present obligation shall be void and of none
 effect.

Surry, } *G. M.* esq; sheriff of the county afore- Precept to do.
 to wit. } said, to the bailiff of the hundred of *K.* liver.
 in the said county, and to *John Dee* and *Richard*
Roe, my bailiffs, and to every one of them, jointly
 and severally, greeting: Forasmuch, as *G. A.*
 hath found me sufficient security, as well for
 prosecution of his action against *H. H.* for un-
 justly taking and detaining his cattle, goods and
 chattels, and which the said *H. H.* takes, and
 unjustly detains as is alledged; as also for return
 thereof, if return thereof should be adjudged.
 Therefore, I command you, and every of you,
 jointly and severally, that upon the behalf of the
 said *G. A.* you replevy, and deliver to the aforesaid
G. A. his said cattle, goods and chattels, and that
 you

you immediately summon the said *H. H.* to appear at the next county-court to be holden at *Guildford*, in and for the said county, to answer the aforesaid *G. A.* in the plea aforesaid, and in what manner you shall execute this precept, certify to me at the said next county-court, to be held at the time and place aforesaid, under the peril incumbent. Given under the seal of my office, this day of *September* in the year of our Lord 1799.

Summons to the
defendant in re-
plevin.

Surry, *ss.* By virtue of a warrant from the sheriff of the county of *Surry*, to me directed, I summon you to appear at the next county-court to be holden at *Guildford*, in and for the county aforesaid, to answer *G. A.* in a plea of taking and unjustly detaining his cattle, goods and chattels.

Dated the day of 1799.

To Mr. *C. D.*

H. F. bailiff.

The sheriff of *Middlesex*, makes use of this form :

To *A. B.* my Bailiff.

Precept to de-
liver.

Middlesex, to wit. When *G. A.* hath found me security as well to prosecute his plaint, as to return his goods and chattels to wit (stating them) which *H. H.* hath taken and unjustly detained as it is said, if return thereof shall be adjudged, then in behalf of our lord the king, and by virtue of my office, I command you, that without delay, you replevy and deliver the said goods and chattels to the said *G. A.* and that you immediately summon the said *H. H.* to appear at the next county-court, to be holden at the house, known, by the name of the sheriff's office, in *Took's-court*, *Cursitor-street*, in and for the said county, to answer the aforesaid *G. A.* in the plea aforesaid ; and in what manner you shall execute this warrant, forthwith make known to me. Dated the day of in the year of our Lord 1799.

} Sheriff.

Insufficient Pledges.

If the sheriff takes insufficient pledges, he, the under-sheriff, and the replevin clerk, (that is the officer appointed to make replevins under the stat. 2 P. & M.) are all liable to the defendant who has judgment *de retorno habendo*. *Richards v. Alton*, 2 Black. Reports 1220. *Prowse v. Pattison*, Bull. N. P. 60. And it was held on solemn argument, that the plaintiff cannot recover damages beyond the value of the distress taken. *Yea v. Leithbridge*, 4 Term Rep. 433.

If sheriff takes insufficient pledges.

It is said some evidence must be given by the plaintiff of the *insufficiency* of the pledges or sureties; but very slight proof is sufficient to throw the proof on the sheriff; for the sureties are known to him, and he is to take care that they are sufficient. *Sanders v. Darling*, Bull. N. P. 60. T. 10 Geo. 3.

Some evidence must be given, b. the plaintiff of the insufficiency.

Know all men by these presents; that I G. M. esq. sheriff of the county of Surry, have at the request of the above-named H. H. the avowant in this cause, assigned over unto him the said H. H. this replevin bond, pursuant to the act of parliament in that case made and provided. In witness whereof, I have hereunto set my hand and seal of office, this day of 1799 (a).

Assignment of replevin bond.

Scaled, &c.

Surry, ff: G. M. esq; high-sheriff of the said county, to all and singular my bailiffs of the said county, greeting: Forasmuch as W. B. hath come before me, and found me sufficient security, as well to prosecute his complaint as to return his cattle, if return thereof shall be adjudged; and therefore, by virtue of my office, I have often commanded you, and every of you, that you, or some one of you, shall cause to be replevied and

A precept on a writ of *writ* or *writ* nam.

(a) To be witnessed by two witnesses.

delivered

delivered to the aforesaid *W. B.* his, &c. which *J. C.* took and unjustly detains, (as it is said,) and you upon my several precepts of *replevin* to you directed as aforesaid, have certified that the cattle, &c. aforesaid, are eloigned to places to you unknown, so that you could not have the view of them: Therefore I now command you, and every of you, that you, or some one of you, take in *withernam* chattels to the value of the said cattle, &c. of the chattels of the said *J. C.* to be delivered to the said *W. B.* for his cattle aforesaid, taken and eloigned as aforesaid: and also that you put, by safe gages and pledges, the said *J. C.* so that he be and appear at my next county-court at *D.* (on such a day) to answer to the said *W. B.* of the plea aforesaid; and you are, or one of you is, to return an answer to this my mandate at my said next county court. Given under the seal of my office, the day of _____ in the _____ year, &c.

Return to a writ
of recordari fac-
cias loquelam.

By virtue of this writ to me directed, in my full county, held at *F.* in the county of _____ the day of _____ in the year of our Lord 1799, I have caused the plaint to be recorded, which was in my county, without the kings writ between the parties within named, which record appears in the schedule hereunto annexed: I have the said record before his majesty, from *Easter-day* in one month within mentioned, wheresoever his majesty shall then be in *England*, under my seal and the seals of *J. G.*, *M. H.*, *J. P.*, and *S. W.*, four lawful knights of the said county who were present at the said record; I have prefixed the same to the said parties, that then they may be there ready to proceed in the said plaint as I am within commanded. The answer of _____

Then on a piece of parchment unstamped, write thus,

The plaint.

Surry, } At my county-court, held at, &c. in
to wit. } the said county, the _____ day of
in the 39th year of the reign of our sovereign lord
George the Third, by the grace of God of *Great Britain*,

Britain, France, and Ireland, king, defender of the faith, &c. before *A. E.*, *K. E.*, *P. K.*, and *J. S.*, suitors of the said court (amongst other things) it is entered, *Middlesex*, (*ff.*) *S. F.* complains of *J. M.* of a plea of taking and unjustly detaining his goods and chattels, as well for prosecuting as for returning the same goods and chattels, if return thereof shall be adjudged, are *A. H.* of, &c. yeoman, and *T. H.* of, &c. barber.

To *K. H.*

Middlesex. By virtue of a warrant from the Sheriff of the county of *Middlesex*, I summon you to appear at the next county court, to be holden at the house known by the name of the Sheriff's office, in *Took's-court, Cursitor street*, in and for the said county, to answer *G. A.* in a plea of taking and unjustly detaining of his goods and chattels.

Summons of the bailiff to the defendant to appear on the recordari.

A. B. bailiff.

Before the coming of this writ to me, the goods and chattels within mentioned were eloigned and removed, by the within-named *C. D.* to places to me unknown, therefore I cannot cause the same to be returned to the within-named *A. B.* as I am within commanded.

Return to a writ of Returno habend. elongatur.

By virtue of this writ to me directed, I have caused to be delivered to the within-named *L.* his cattle within mentioned, as I am within commanded.

Return to a writ of ad deliverance

Pledges to prosecute, { *John Doe*
and
Richard Roe.

Summoners of the within-named *C. D.* are *D. K.* and *J. B.* The answer of, &c.

Every *pone* is only a summons to command the Sheriff to summon or prefix a day to the parties, plaintiff and defendant, that they appear in *Banco*, &c.

Return to a pone summoned.

R E S C U E.

In Civil Cases.

Rescue, what.

RESCUE is the taking away and setting at liberty against law a distress taken for rent, or services, or damage feasant; but the more general notion of rescous is, *the forcibly freeing another from an arrest*, or some legal commitment, which being an high offence, subjects the offender not only to an action at the suit of the party injured, but likewise to fine and imprisonment at the suit of the king. *Co. Lit.* 160. *F. N. B.* 226.

And what party is subject to.

Rescue is where a person is arrested upon any legal process, or warrant, and other persons do forcibly take him out of the custody of the person who arrested him.

On pound breach or rescous of goods, party to have action on the case.

“ That upon pound breach or rescous of goods “ distrained for rent, the person grieved shall in a “ special action on the case recover treble damages “ and costs against the offenders, or against the “ owner of the goods, if they come to his use.” *2 W. & M. st. 1. c. 5. s. 5.* And it is held he shall recover treble costs. *1 Salk.* 205.

When sheriff not liable, but may return the rescue.

If the sheriff arrests a person on *mesne process*, and he is *rescued in going to gaol*, the sheriff is not liable; for as the sheriff, if he meets the party against whom he has such process, is bound to arrest him, if pointed out to him, so he cannot be supposed to have the *posse comitatus* then with him. *Cro. Jac.* 419. *Cro. Eliz.* 873.

4 Co. 84. 2. 1 Roll. Abr. 308.

In all cases of *mesne process* in cases of *rescue* he shall be excused, being on the same principle. But if he be once *in the walls of the prison* after such arrest on *mesne process*, he shall in all cases be liable (except the rescue be by the king's enemies, or the escape by reason of fire). But the sheriff cannot return a rescue on process of execution. *1 Roll. Abr.* 808.

When not.

The

The offence of rescuing persons on *mesne process*, or in execution after judgment, subjects the offender to a writ of *rescous*, or a general action of trespass *vi & armis*, or an *action on the case*, in all which damages are recoverable. Also it is the frequent practice of the courts to grant an *attachment* against such wrong-doers, it being the highest violence and contempt that can be offered to the process of the court. *F. N. B.* 226. *3 Bulstr.* 205. *Co. Lit.* 161. *Cro. Jac.* 446. *Hob.* 180. *Salk.* 586.

The offence of rescuing persons on *mesne process*.

Also an attachment.

He who rescues a prisoner from any of the courts at *Westminster-hall*, without striking a blow, shall forfeit his goods and the profits of his lands, and suffer imprisonment during life: but not lose his hand, because he did not strike. *22 E. 3. c. 13.* *3 Inst.* 141.

Rescue from any of the courts of Westminster, without striking a blow, forfeits goods, and profits of the land.

An attachment will not only be granted against a common person, but even against a *peer of the realm*, for rescuing a person arrested by due course of law; so that if the *sheriff* in any case return to the court, that a person arrested, or goods seized, or possession of lands delivered by him, by virtue of the king's writ, were *rescued* or *violently* taken from him, &c. they will award an attachment against the rescuers. But they will not grant such attachment unless the officer returns the rescue, for it hath been found by experience, that officers will take upon them to swear a *rescous*, where they will not venture to return one. *2 H. P. C.* 153. *6 Mod.* 141.

Attachment will be granted against a peer.

But will grant no attachment, unless the sheriff returns the rescue.

The stat 8 & 9 *W. 3. c. 27. sect. 15.* inflicts a penalty of 30*l.* for resisting the officer in *Whitefriars*, &c. and the offender to suffer imprisonment and be set in the pillory. And if any *rescous* be made of any prisoner within any pretended privileged place there mentioned, the person making *rescous*, or assisting the same, being convicted shall forfeit 500*l.* and in default of payment to be transported to the plantations for seven years, and any person harbouring a rescuer, knowing him to be such, to be transported for seven years.

A penalty for resisting an officer in certain places and imprisonment.

On reading the
sheriff's return of
a rescue, attach-
ment of course.

Upon reading the return of a rescue, an attachment goes of course in the first instance. *Rep. and Cas. Pract. C. P.* 126. *Bridger v. Colely. Trin. 5 Geo. 2. K. B. Young v. Payne, Salk. 586. but it is never granted on affidavit of the fact. 2 Salk. 586.*

Formerly set a
fine of 4 nobles.

It was formerly the constant course upon the return to set a certain fine of 4 nobles on each offender, but of late the court have fined according to their discretion, on the circumstances of the case. *1 Str. 642. Rex. v. Minify.*

Obstructing
excise officers.

But where a defendant was brought up on an attachment for rescuing a person arrested on a warrant for obstructing excise officers, *Lord Kenyon* said, it was the invariable practice to put the defendant to answer interrogatories; but the prosecutor afterwards waived putting them, the court passed judgment. The defendant in this case did not deny the facts charged in the affidavits. *Rex. v. Horsley, 5 Term Rep. 362.*

Return of Rescous.

If on mesne pro-
cess a rescue,

If the sheriff arrests the defendant on *mesne process*, and the defendant be rescued by *J. S.* he may return the rescue, and such return is good. *Gilb. C. P.* 23. but not where the defendant is rescued *after he is put in prison*, except by the king's enemies. *Cro. Jac. 419. 1 Str. 435. 5 Burr. 2814.*

What is a good
return.

If a *rescous* be made upon *mesne process*, the sheriff may return, that the defendant was arrested and rescued himself and that *non est inventus* after. *Kitch. 160. b. 2 Cro. 419.* Or that he and others rescued. *Kitch. 261. a.*

Mand. balli.

So the sheriff may return *mandavi ballivo*, who returned a *rescous*. *2 Rol. 457. l. 5.*

Return of rescue
ought to be cer-
tain.

The return of a *rescous* ought to be certain, and therefore if it does not shew *where he was arrested*, it will be *insufficient*. So if it does not shew *the place where he was arrested*, for perhaps it was out of the county. *Yelv. 51. Mo. 422.*

It

It is necessary to shew the *year, day*, and the *persons* who made the rescue. *Moo. 422. Palm. 563.*

Necessary to shew the year, &c.

If the sheriff makes the return of a bailiff of a franchise, he ought to shew that he had the return of writs. *Cro. Eliz. 781.* And that the *rescous* was from such bailiff.

If return of a bailiff of franchise.

It ought to shew that the person to whom the sheriff directed his warrant, was his bailiff. *Str. 155.* And for what cause the warrant was directed to him. *Ibid.*

Ought to shew person who arrested was his bailiff, &c.

It is sufficient to say, that he made a warrant to arrest, without saying under seal, for the word warrant imports it. *2 Jon. 197.*

Sufficient that he made warrant.

Sufficient that he was rescued out of the custody of a bailiff by virtue of a warrant to him made; for this is out of the custody of the sheriff. *Jon. 197. Salk. 586. 2 Lev. 28.*

Sufficient that he was arrested, &c.

That he was arrested in the county aforesaid, though it does not say *within his bailiwick*; for it shall not be intended out of it, if it be in the county. *Relo. 51.*

That he was taken in the county.

That he was rescued from *A.* bailiff of a liberty, to whom he directed his warrant, without saying, that he had the return of writs, for it shall be intended the bailiff of the sheriff, and the words of a liberty, rejected. *Cro. Eliz. 781.*

Rescued from *A.* bailiff of a liberty, without saying he had return, &c.

That several rescued him, without saying; & *quilibet eorum se rescussit*, for it is in the affirmative. *1 Vent. 2.*

That several rescued him.

That he was rescued from the sheriff, tho' taken by the bailiff. *Str. 417.*

Rescued though taken by the bailiff.

It it appear on the return that the warrant was to two, and the arrest by one only, yet the return is good; for it is no exception in what relates to public justice. *Str. 117.*

If warrant to two arrest by one, return good.

That the bailiff arrested the defendant is good. *Str. 225. Foss. 362.*

That the defendant being in my custody, is sufficient. *Ibid.*

The return cannot be traversed. *4 Burr. Rep. 2129. Rex v. Elkins. Barnes 429.* But the rescuer

Return cannot be traversed.

may be admitted to give recognizance, to try false return against the sheriff. *Barnes* 430. And if there be a verdict for plaintiff, the recognizance shall be discharged. *Ibid.*

Return of rescue
by several.

The execution of this writ appears in the schedule hereto annexed.

The answer of, &c.

By virtue of his majesty's writ to me directed, and to this schedule annexed, I duly made my warrant, and directed the same to *A. S.* my bailiff, commanding him to take *W. C.* in the said writ named, if he should be found in my bailiwick and him safely keep, so that I might have his body before our sovereign lord the king on the day and place in the said writ mentioned, and before the return thereof, to answer to *A. H.* in the plea and to the bill therein mentioned; which said bailiff by virtue of my aforesaid warrant, afterwards on the day of in the year of the reign of our lord the now king, at in the parish of in my county, arrested and took the body of the said *W. C.* according to my said warrant, and kept and detained him under such arrest and in custody as aforesaid, for want of bail to the said writ, from thence for the space of one hour then next following, and until the said *W. C.* and one *J. K.* of the same place esq. *G. H.* of the same place gent. and *L. M.* of the same place gent. together with divers other persons, to me and my said bailiff at present unknown, with force and arms, made an assault on the said *A. P.* my bailiff, and then and there beat, wounded and ill-treated him, so that his life was thereby greatly despaired of, and the aforesaid *W. C.* being so in custody and under the said arrest as aforesaid, then and there out of my custody, and the custody of my said bailiff, against my will, and the will of my said bailiff, did forcibly take and rescue, and at his free will and pleasure set and permitted to go at large wheresoever he pleased, against the peace of our lord the now king. And he the said *W. C.*
then

then and there with force and arms, against my will and the will of my said bailiff, unlawfully then and there rescued himself out of my custody, and the custody of my said bailiff, against the peace of our said lord the king, and afterwards the said *W. C.* was not found in my bailiwick. Therefore I cannot have the body of the said *W. C.* in the said writ named, before the lord the king on the day and place in the said writ named.

The answer of *John Denn* esq. sheriff.

By virtue of his majesty's writ to me directed and to this schedule annexed, I made my warrant, bearing date the day of in the 30th year of the reign of his present majesty, directed to *L. M.* my bailiff, commanding him that he should take *J. B.* in the said writ named, &c. (as in the first return). By virtue of which said warrant, the said *L. M.* afterwards and before the return of the said writ, to wit, on the day of in the year aforesaid, at *L. S.* in the said county of *S.* did take and arrest the within-named *J. B.* who was then on horseback, and had and detained him in custody until the said *J. B.* afterwards, (that is to say) immediately afterwards on the same day and year last aforesaid, at *L. S.* aforesaid, within my bailiwick, with force and arms, made an assault on the said *L. M.* and then and there beat down, and rode over the said *L. M.* and then and there against my will and consent, and against the will and consent of my said bailiff, rescued himself, and escaped from and out of my custody, and the custody of my said bailiff, against the peace of our lord the now king; and afterwards the said *J. B.* was not found in my bailiwick: therefore I cannot have the body of the within named *J. B.* before the lord the king, on the day and place, in the said writ mentioned, as I am within commanded. The answer of, &c.

Another return of rescue where defendant was arrested on horseback and rode down the bailiff.

In Criminal Cases.

In criminal matters.

RESCUE is the forcibly and knowingly freeing another from an arrest or imprisonment, and it is generally the same offence in the *stranger* so rescuing, as it would have been in a gaoler to have voluntarily permitted an escape; but upon *voluntary escapes*, the principal must first be attainted, before the rescuer can be punished, because it may turn out, that there has been no offence committed. *Fost. Cr. L. 344. 1 Hale 607.*

Rescuing a person for felony, is so.

It seems agreed, that the rescuing a person imprisoned for felony, is also felony by the common law. *1 Hal. Pl. Cr. 606.*

So the same for high treason.

That a stranger who rescues a person committed for and guilty of high treason, knowing him to be so committed, is in all cases guilty of high treason; *Stamf. Pl. Cr. 11.* whether he knew that the prisoner were so committed or not. *Cro. Car. 583.*

To make it felony.

To make a rescue felony, Lord *Hale*, says, **I.** That it is necessary that the felon be in custody or under arrest for felony; and therefore if *A.* hinder an arrest, whereby the felon escapes, the township shall be amerced for the escape, and *A.* shall be fined for the hindrance of his taking; but it is not felony in *A.* because the felon was not taken. *1 Hal. H. P. C. 606.*

To make a rescue felony, the party rescued must be under custody for felony, &c.

So to make a rescue felony, the party rescued must be under custody for felony, or suspicion of felony; and it is all one, whether he be in custody for that account by a private person, or by an officer, or warrant of a justice, for where the arrest of a felon is lawful, the rescue of him, is felony; but it seems necessary he should have knowledge that the person is under arrest for felony, if he be in the custody of a private person. *Ibid.* But if he be in custody of an officer, as *constable* or *sheriff*, there at his peril he is to take notice of it; and so it is if there be felons in a prison, and *A.* not know-
ing

Necessary to have knowledge that the person is under arrest for felony.

ing of it, breaks the prison, and lets out the prisoners, though he knew not that there were felons there, it is felony. 1 Hale 606. Cro. Car. 583.

A person committed for high treason, who breaks the prison and escapes, is guilty of felony only, unless he lets others also escape, whom he knows to be committed for high treason, not in respect of his own breaking of prison, but of the rescues of others. 2 Haw. 140.

A person committed for high treason, breaks the prison and escapes, is guilty of felony.

Wherever the imprisonment is so far groundless or irregular, or the breaking of a prison is occasioned by such a necessity, &c. that the party himself breaking prison, is either by the common law, or by the statute *de frangentibus prisonam*, saved from the penalty of a capital offender; a stranger who rescues him from such an imprisonment is in like manner also excused; & sic à converso. 2 Haw. 139.

If imprisonment of the person is groundless, rescuer excused.

Return of a rescue of a felon by the sheriff against *A.* is not sufficient to put him to answer; for it is a felony, without indictment or presentment. 25 E. 3. c. 4.

Return of a rescue of a felon by the sheriff, not sufficient to put to answer.

By 6 Geo. 1. c. 23. s. 5. "If any person shall rescue felons, ordered for transportation, or assist them in making their escape, he shall be guilty of felony, and suffer death without benefit of clergy. 9 Geo. 1. c. 28. rescuing persons arrested in the mint, felony."

Rescuing felons ordered for transportation.

This offence is punished by indictment, and such indictment ought to set forth, "the special circumstances of the fact with such certainty, as to enable the defendant to make a proper defence." For no defect can be aided by the verdict. Dy. 164. 1 Rol. Abr. 781. Therefore day material. Moor 55. Rastal Entr. 263. But not necessary to alledge the place where the rescue was made, for it is to be intended, where the arrest was, there also was the rescue, without the word *ibidem*. Cro. Jac. 345. 2 Bulstr. 208.

To be punished by indictment, and what it ought to set forth.

County-Court.

Policy of our antient constitution was to bring justice home to every man's door by constituting as many courts of judicature, as there are manors.

These little courts communicated with others of a larger jurisdiction and those of greater power.

Inferior courts still continue in our legal constitution.

For the better government of the county, two courts appointed.

THE policy of our antient constitution, as regulated and established by *Alfred*, was to bring justice home to every man's door, by constituting as many courts of judicature as there are manors and townships in the kingdom; wherein injuries were redressed in an easy and expeditious manner, by the suffrage of neighbours and friends. These little courts however communicated with others of a larger jurisdiction, and those with others of a still greater power; ascending gradually from the lowest to the supreme courts, which were respectively constituted to correct the errors of the inferior ones, and to determine such causes as by reason of their weight and difficulty demanded a more solemn discussion. The course of justice flowing in large streams from the king, as the fountain, to his superior courts of record; and being then subdivided into smaller channels, till the whole and every part of the kingdom were plentifully watered and refreshed.

These inferior courts, at least, the name and form of them, still continue in our legal constitution, but as the superior courts of records have in practice obtained a concurrent original jurisdiction with these; and as there is besides a power of removing plaints or actions thither from all the inferior jurisdictions; upon these accounts (among others) it has happened that these petty tribunals have fallen into decay, and almost into oblivion: whether for the better or for the worse, may be matter of some speculation; when we consider on the one hand the increase of expence and delay, and on the other the more upright and impartial decisions that follow from this change of jurisdiction.

For the better government of the county, and for the punishment of evil doers therein, the sheriff had

had two powers or courts appointed; the one the *sheriff's torne* unto which all the county were compellable to come of a certain age to hear the articles and things given in charge, so that they might not be ignorant of the laws whereby they are to be governed, and where they were also to be sworn to their allegiance. The other was the *county-court*, to give remedy between man and man for any personal action under 40 s. 2 *Inst.* 312. 4 *Inst.* 460.

Torne.

County-court.

Afterwards it was found that the administration of justice was too great a thing for the sheriff, by reason of the multitude of people, and for their ease and better government, and more easy administration of justice, *leets* were derived out of the *torne*, and were granted to the lords of franchises or manors; and hundred courts were derived out of the county-court granted by the kings to the lords of certain liberties, to hold plea under 40 s. of contracts made within the hundred. The hundred court, says Sir *Edward Coke*, was derived out of the county-court, for the ease of the people, that they might have justice done to them at their own doors, without any charge or loss of time. 2 *Inst.* 71.

Afterwards found too heavy for sheriff to administer justice in both courts.

Leets were derived out of the *torne*, and hundred courts out of the county-court.

And that people might have justice done at their own doors.

The Court.

The *county-court* is a court-baron, and not a court of record, in which the suitors are judges, and not the sheriff.

It is a court incident to the jurisdiction of the sheriff; it is *not* a court of record, but may hold plea of debt or damages under the value of 40 s. Over some of which causes, these inferior courts have, by the express words of the statute of *Gloucester*, 6 E. 1. c. 8. a jurisdiction totally exclusive of the king's superior courts, providing, "That sheriffs shall plead pleas of trespass in their counties, as they have been accustomed to be pleaded: and that none shall have writs of tref-

County-court, incident to the office of sheriff; but not a court of record, holds plea for under 40 s.

Exclusive jurisdiction by this statute.

“ pass before justices, unless he swear by his faith,
 “ that the goods taken away were worth 40 s. at
 “ the least.”

Holds plea of
 real actions, and
 personal actions
 by writ of justici-
 es.

This court may also hold plea of many real actions, such as dower, right patent, or right ward, 4 *Inst.* 266. 3 *Inst.* 312. and of all personal actions to any amount, by virtue of a special writ called a *justicies*; which is a writ issued out of the chancery, empowering the sheriff for the sake of dispatch, to do the same justice in his county-court, as might otherwise be had at *Westminster*, *Finch* 318. *F. N. B.* 152.

The freeholders
 are the judges,
 sheriff is the mi-
 nisterial officer.

Freeholders at-
 tending this
 court, is the rea-
 son why all acts
 of parliament
 were formerly
 read; and why
 outlawries are
 there proclaimed:
 and all popular
 elections, &c.
 must be made in
 full county-
 court.

The freeholders of the county, are the real judges in this court, and the sheriff is the ministerial officer. This great conflux of freeholders, which are always supposed to attend at the county-court, is the reason why all acts of parliament at the end of every session were wont to be there published by the sheriff; why all outlawries of absconding offenders are there proclaimed: stat. 13 *Eliz.* c. 3.; and why all popular elections, which the freeholders are to make, as formerly of sheriffs and conservators of the peace, and still of coroners, verderors, and knights of the shire, must ever be made *in pleno comitatu*, or in full county-court.

The county-
 court, was a
 court of dignity,
 and why.

In the time of King *Edward* the Elder the county-court, was a court of great dignity and splendor; the bishop and the ealderman (or earl) with the principal men of the shire, sitting therein to administer justice; the former to judge according to the ecclesiastical law, the latter to judge according to the laws of the kingdom. But its dignity was much impaired, when the bishop was prohibited, and the earl neglected to attend it, which was in the time of *William the Conqueror*, as appears by a mandate in *Seld. Jani. lib. 2. fol. 76. La. Edgar, c. 5.*

But dignity now
 impaired.

In ancient times,
 indictments, &c.
 were in this
 torne.

In ancient times, pleas of the crown, indictments of felony, trespasses, and other offences, were depending in the torne, as appears by *Glanvil, lib. 1.*

c. 2, 3, 4. by *Bracton* and *Britton* in divers places, and by *Fleta lib. 2. c. 62.* until the statute of *Magna Charta*, c. 17, which says expressly, “that no sheriff shall hold pleas of the crown.” And by stat. 1 Ed. 4. c. 2. it is ordained, “that the sheriff, under sheriffs, clerks, viz. county-clerks, and their ministers, shall bring, present, and deliver all indictments taken before them in their turns or law days to the justices of the peace, at the next sessions of the peace.”

But sheriff is now not to hold pleas of the crown, but deliver them to the justices, &c.

As this court hath of ancient times belonged to the-sheriff, and incident to the office, the king cannot grant by letters patent, the office of county-clerk, nor the fees, but of right belongs to the sheriff, 4 Co. *Mitton's Case*; and such county clerk ought to be endued with these qualities, according to the description of *Fleta*.

Sheriff to appoint county-clerk.

Circumspection, fidelity, providence, humility, peace, and modesty, and must know the laws and customs of the country, and have ability to instruct and direct the bailiffs or other ministers in dubious things, wherein they may not err.

Qualities of the county-clerk.

And *Bracton* says, he must neither be attracted by price nor corruption, nor any sinister respect, to wander out of the way of right.

Bracton.

The county-clerk must be careful in deputing honest, able, and sufficient men, as bailiffs, for the executing of precepts issuing out of the court; and it is just cause of superseding them, if they take unreasonable distresses, or more than the accustomed fees, or do not make return of their precept to the county-clerk, or the plaintiff's attorney. He must make the usual process after the complaints entered against the defendants, directed to the sheriff's bailiff, to summon, attach, or distrain the defendant by his goods, to appear at the next county-court after, to answer the plaintiff in the action.

County-clerk to depu- te bailiffs, &c.

County-clerks to make the usual process, &c.

At the adjourning of every court, he must appoint a day certain for the next court, to the intent, the county may know what time to resort thither,

When he adjourns the court, to appoint a day certain for the next.

thither, to have the writs of *exigent*, and *proclamations* read.

When to be holden.

Holden from
month to month.

This court is to be holden and kept from *month to month* on a *certain day*, and shall be no longer deferred. 9 *H. 3. c. 35.* 2 *Ed. 6. c. 25.* And the computation shall be by *lunar months*, 2 *Inst* 71. and not *calendar*. And so within the *twelve shires of Wales*, the sheriffs shall keep their counties monthly. And so within the county-palatine of *Chester*. 34 *H. 8. c. 26.*

The necessity of
keeping it
monthly.

The necessity of keeping this court every *month*, and on a *day certain*, is by reason of the king's writ of *exigent*, which must be proclaimed or read there.

Coroners to sit.

And the coroners are to sit with the sheriff, at every county court, to give their judgments upon outlawries. *Dyer* 223. *Finch.* 116. But in *London*, the judgment upon outlawries is given by the recorder. *Co. Lit.* 288. *b.* in the court of *Hustings*.

At what Place.

May be kept in
any place.

This court by the common law may be kept or holden in *any place*, at the *pleasure* of the *sheriff* or *under-sheriff*, so that it be *within* the county, if it be not appointed by statute in a *place certain*. As for instance, *Northumberland*, at the town of *Alnwick*. 2 *Ed. 6. c. 5.* *Suffex*, at *Chichester* one time, *Lewes* at another, and so *alternis vicibus*, for ever. 19 *H. 7. c. 24.*

Chester;

Chester, in the shire-hall of the said county. 33 *H. 8. c. 13.*

Wales.

And the sheriff's *shire courts* in *Wales*; of the county of *Brecknock*, at *Brecknock*; of *Radnor*, at new *Radnor* and *Preston*; of *Montgomery*, at *Montgomery* and *Maghenleth*; of *Denbigh* at *Wrexham*; and of *Monmouth*, at *Monmouth* and *Newport*; *alternis vicibus*.

By

By stat. 7 & 8 W. 3. c. 25. it is enacted, "That all county-courts holden for the county of York, and all other county-courts that were to be holden on a Monday, shall be called on Wednesday, and not otherwise."

County-courts to be held on Wednesday.

But if a plea be there by justices, the sheriff ought to be there in person, and cannot make a deputy. For, if he does, the proceedings will be *coram non iudice*, and void. 2 Leon. 34. 210. But, if the court is alledged to be held before the sheriff, it seems to be well. 21 H. 6. 34.

Justices.

For to this court, all persons dwelling within the county, being summoned, ought to appear, by reason of their residence in it; and, if they do not appear according to summons, they are attached or distrained by their goods, to answer the plaintiff in the suit. But no fine can be imposed on any offender, because it is no court of record. 8 Co. 41 and 60.

To this court, all persons dwelling in the county are to appear.

By stat. 27 H. 8. c. 26. and 34 H. 8. c. 26. The sheriffs of the counties of Wales, shall hold plea of *replegiari*, and all other suits and complaints, under 40 s. in their county or shire courts; in like manner, all other sheriffs do within the realm of England.

Sheriffs of Wales.

The style of the court is, "Bucks, ff. The first court of the county of George Bedford esq; sheriff of the county aforesaid, held at Buckingham."

Style of the court.

"And the next court, the second, and so forth."

It holds no suits of charters for lands, or for inheritance, or to make several complaints upon one entire debt, nor any action to compel one to render an account, though under 40 s.; because the sheriff cannot assign auditors, who are judges of the record; and this is no court of record. 2 Inst. 380. Nor can hold plea of any debt due by record, otherwise, it is of debt upon record in the same court. Nor debt due on bond. Dalt. 412. Nor action of deceit, maintenance or forgery of false deeds. Ibid. Nor unless both defendant reside and the cause of action arise within the jurisdiction of

What this court does not hold plea of.

of

of the court even for less than 40s. 6*Term Rep.* 175; 2*H. Black. Rep.* 29. 1*Bosanj. & Pull. Term Rep.* 75; and where those circumstances do not concur the action must be brought in the *superior court*.

Of the Proceedings by Action.

Holds plea by
pleint.

THE county-court holds plea by plaint in debt, detainue, or other personal action (not being *vi et armis*) under the value of 40s. 2*Inst.* 312. So if the debt was originally above 40s. if the plaintiff by his declaration acknowledges the receipt of so much as reduces the debt under 40s. it may hold plea by plaint in *trespass*, if it be not *vi et armis*; as of a battery. 2*Inst.* 312. So in replevin, 52*H.* 3. c. 21. 2*Inst.* 139.

The process.

Process in the county-court shall be by summons, attachment, and distress infinite in all personal actions by plaint or *justicies*, except in *trespass*. And in *trespass* it shall be by attachment and distress infinite.

The summons may issue two or three days before the court day, 4*Inst.* 266. and shall be directed to the bailiff; and the sheriff shall make the precept in his own name, though the suitors are judges. 3*Lev.* 203. And it shall be to the sheriff's bailiffs. *Lut.* 1413. not to *special* bailiffs. And if the defendant does not appear upon summons, an attachment shall go against him (and in *trespass* it is the first process) directed to a bailiff, that he put by safe and secure pledges, &c. Upon which the bailiff attaches him by pledges, or his goods.

Or it is sufficient, that he warns him to appear, if he be returned warned.

If the defendant does not appear upon the attachment, a *distingas* shall go; by which the bailiff shall distrain the goods of the defendant, and keep them till he appears; and if he makes default, they are forfeited. And so *distingas in infinitum*, till the defendant appears. But a *capias* does not lie in this court.

Every

Every plaint ought to be entered in writing; and the plaintiff or his attorney be present.

The plaintiff in this action, in the first place, is to find no pledges to prosecute in the suit.

The mode in which the proceedings are to be in this court.

He, or his attorney, is first to take out a summons from the sheriff, returnable at the next county-court, which is directed to the sheriff's bailiff, who is to summon the defendant; and, if he appears by attorney, the plaintiff must also enter his appearance by attorney, and enter or file his declaration, wherein he is to shew his cause of action in the same form, as in the other courts, but engrossed on parchment, with a double penny stamp. *Vide stat. 11 H. 7. c. 15.*

First summons.

Plaintiff at next court, to enter his appearance, and declare.

The next court, after filing the declaration, the defendant may imparl, and at the next court after, he is to put in his plea, on a double penny stamp parchment, and the plaintiff is to continue his suit from court to court.

Defendant may at next court imparl.

If issue be not joined, at the next court following, plaintiff is to file his replication or demurrer.

To file replication, &c.

If the plaintiff reply, then the defendant is to rejoin at the next court, or he may be ruled for that purpose, on peril of neglect.

But, if freehold be pleaded, this court can proceed no further, if the action be upon plaint; but if brought by writ of *justicies*, which gives a power to the sheriff to hold plea of 40 s. or above; the plaintiff may reply, and shew his title, and the court may proceed and determine the issue. *Dalt. 507.*

If freehold pleaded, no further proceeding, unless by justicies.

Upon issue being joined, a jury is thereupon warned to appear, and try as in other cases.

Issue joined.

The proceedings are filed with the under-sheriff regularly, from court to court, and imparlances are granted of course.

Proceedings are filed.

When the trial is over, the verdict being for the plaintiff, he may have a *feri facias*, but cannot have a *capias ad satisfaciendum*, (though in *Wales*, the contrary is, by stat. 34 H. 8.) for this court being not of record, a *capias* does not lie, but an

Trial over, and verdict for the plaintiff, execution may be had against the goods, &c. but not a *cap. ad satisf.*

action

action may be brought upon this judgment in the *superior court*, though the verdict be under 40*s.* *Cro. Eliz.* 96. *Greenw.* 22. A *levari facias* may be had of the goods and chattels, but not of the land and chattels. *Lutw.* 1413.

If the defendant does not appear, the next process is a *distringas*.

If the defendant should *not* appear at the next county-court after summoned, the bailiff having returned him, *warned or summoned*, the sheriff then issues out a writ of *distringas*, to distrain his goods, or a writ of attachment; and if he appear not on the return of the goods being levied, he issues an *alias* and *pluries*, and so on *ad infinitum*, until he does appear.

Goods distrained to be kept.

And the goods or chattels, whereby the defendant is so attached or distrained, the bailiff shall keep them until the next county-court, except the defendant replevy the same by two pledges, who shall become sureties, that the defendant do appear at the next county-court, to answer the plaintiff. But if he do not replevy the goods, and defendant makes default at the next court, (at the day given by the *distringas* or attachment,) the court shall award the goods so attached to be forfeited, and shall keep them, and he may distrain again to be at the next county-court.

Compelling to declare,

The defendant may compel the plaintiff to declare, by giving a rule for fourteen days, next after the usual time allowed.

If not nonpros,

And if plaintiff doth not file his declaration *within the time*, then upon such default the plaintiff is nonsuited; and the defendant may have costs taxed by the county-clerk, who is to receive 2*s.* for entering the judgment, and 2*s.* for the execution.

Costs.

And in every case where the plaintiff may have costs against the defendant, the defendant shall have his costs. *Stat. 23 H. 8. c. 5.*

If there is a delay of execution.

If the sheriff delays execution, a writ *de executione judicii* may be directed to him out of chancery to do execution, and thereupon an *alias* and *pluries*, and attachment against the sheriff.

In *Yorkshire*, the custom is, in actions of debt to file a declaration, according to the cause of action, and to sue out a *venditioni exponas*, after the third attachment, to sell such goods as have been taken upon that and the two former ones; for this reason, that when the defendant absconds, or will not appear to the action, the plaintiff may receive the value of the goods distrained towards satisfaction of his debt and costs, else they would remain in the bailiff's hands, and the plaintiff be without remedy in this court. *Greenw. 34.*

Custom in *Yorkshire*, to sue out a *vend. expon.* after the third attachment.

And in this court, no execution can issue without a *scire facias*, if the judgment is above a year old. And where a *scire facias* is requisite in the superior courts, so it is here.

Scire facias, after year and day.

If the defendant puts in no plea in time, then judgment is signed, or passes against him by his default, and a writ of inquiry is awarded the same day.

If no plea put in, judgment by default.

The Manner of keeping this Court.

THE sheriff, at the first court after his election and discharge of the old sheriff, must read his patent, and writ of assistance, and nominate his under-sheriff and county-clerk, and appoint four deputies at the least, to make replevins for the ease of the county.

Method of holding the court.

"*Yorkshire, ss. The first county court of J. B. Esq; sheriff of the said county, held at, &c. in the aforesaid county, the day of in the 39th year of the reign of king George the Third, 1799, before A. B. and C. D. suitors of the same court.*"

Entry of the plaint in debt and case.

Then command the bailiff to make three proclamations, O yes, &c. and say,

"All manner of persons, that have any thing to do at this county-court of J. B. Esq; sheriff of the county of York, holden here this day for this county of York, come forth and give your attendance."

Bailiff to open the court, thus,

Second proclamation.

Command the bailiff to make proclamation again, and say, "*All manner of persons, keep silence and hear the king's writ of exigent and proclamation read.*"

Coroner to pronounce judgment of outlawry.

A coroner is to be then present, to pronounce judgment of outlawry, against those that do not appear upon the *exigent* and *proclamation*, at the *fifth* county-court.

The manner of pronouncing the judgment.

The manner of the coroner pronouncing is thus, viz. he takes the *exigents* in his hands, and says, "*Forasmuch as A. B., C. D., and the rest of the men, defendants, named in these writs of exigents, have been called five county-days, and have not rendered their bodies to the sheriff of this county of York; therefore, we pronounce them, and every of them, outlawed.*"

Women.

The like for the women defendants, using the word *waived*, instead of *outlawed*.

Third proclamation.

Command the bailiff the third time to make proclamation, *O yes, &c.* and say,

"*If any will enter any plaint, let him come forth, and enter them with the county-clerk.*"

Then enter the plaint in this manner,

The form of the plaint, to be entered in the book.

Yorkshire, ss. A. B. complains of C. D. of a plea of debt 39 s. 11 d.; or A. B. complains of C. D. of a plea of trespass in the case to the damage, of the said A. B. of 39 s. 11 d.

Proceedings thereon.

Then call the plaintiff thus, "*A. B. appear, or thou loseth thy plaint,*" three times.

If he appear.

If he appear by his attorney, then enter the warrant of attorney, viz. the two first letters of his name, over the name of the plaintiff.

Then call the defendant.

Call defendant thus.

"*C. D. appear, and answer A. B. in an action of debt, (or as the case is,) or thou forfeit thy goods distrained, and further process will be awarded against thee.*"

If he appear, then enter his appearance.

Plaintiff has time to declare until next court.

N. B. The plaintiff hath time to declare until the next court after the defendant's appearance, and

and the defendant imparls until the next court-day after.

When the defendant puts in his answer, if the plaintiff joins issue, they may proceed to trial the next court-day, if they proceed not farther by replication, *Rejoinder*, *Rebutter*, &c. If he puts in his answer, plaintiff may join issue.

If they be at issue, sue out a *venire facias* to summon the jury; then enter on the head of the panel thus: *The jury between A. B. plaintiff, and C. D. defendant, of a plea of debt.* When they are brought to the bar, bid the bailiff make proclamation, and say, If at issue, ven. fac. must issue.

"You good men that be impanelled to try the issue between A. B. plaintiff, and C. D. defendant, answer to your names, every man upon the first call, upon pain and peril that shall fall thereon." Proclamation for jury men.

If twelve appear, swear them one by one, as follows; "You shall well and truly try the issue joined between the parties, according to the evidence." Oath to jury.

"So help you God."

Being all sworn, bid them stand together, to hear the evidence;

Then swear the witnesses. "The evidence that you are to give to this inquest, touching the matter in variance, shall be the truth, the whole truth, and nothing but the truth. So help you God." Oath to witnesses.

The jury of course after the evidence is finished are to give their verdict in the same manner as in the courts above. Jury to give the verdict.

The verdict being pronounced and recorded, then adjourn the court to another day to be kept, commanding the bailiff to make proclamation, O yes, &c. and say, Proclamation after to adjourn.

"All manner of persons that have any thing more to do at this court, let them come forth and they shall be heard, otherwise they and every one else may depart hence for this time; and keep their hour here on Wednesday the day of next, at 10 of the clock in the forenoon." Adjournment of the court.

For proceedings in this court in *replevin*, vide title *Replevin*.

Proceedings in
the county-court
of *Middlesex*.

Times and places
appointed for
holding the
county-court.

Monthly court
to be kept as
usual.

No complaints or
orders of the court
may be removed;

Except in reple-
vin.

Who may be
summoned.

Jurisdiction of
the county-court
not extended.

The stat. 23 *Geo. 2. c. 33.* " empowers the
sutors of the county-court of *Middlesex*, with
the county-clerk, upon any plaint to be en-
tered in the said county-court, in any suit, where
the debt or damages shall not amount to 40 s., to
proceed in a summary way, &c." *f. 1.*

Section 2. enacts, " that the sheriff, by his
county-clerk, hold his county-court, for the pro-
ceeding, on *Thursday* in every week, at some
convenient place within the hundred of *Offsutton*,
and on the first *Tuesday* in every month, at
some convenient place within the hundreds of
Isleworth, or *Elthorne*, and on the last *Tuesday*
in every month, at some convenient place within
the hundred of *Edmonton*; provided always,
that the monthly court of the sheriff shall be
held as has been accustomed." *f. 2.*

" That no plaint to be entered in the said
county-court, as aforesaid, nor any order or
orders or other proceedings had thereupon by
virtue of this act, shall be removed out of the
said court by any writ of *recordare*, *recordare*
facias loquelam, *certiorari*, or false judgment, or
otherwise howsoever; but such order to be made
by the said sutors and county-clerk, shall be
final to all parties; provided, that all plaints
in replevin shall be proceeded in, and remove-
able in the same manner, as if this act had not
been made; provided also, that no person shall
be liable to be summoned to the said county-
court at the suit of any plaintiff, other than
such person or persons as was or were liable to
be summoned to the county-court of *Middlesex*,
before this act made, and that this act shall
not extend to give the said county-court, any
jurisdiction to hold plea of, or to hear or de-
termine any action, cause, or suit, other than
such action, cause, or suit, as the county-court
of *Middlesex* might have held plea of by plaint
before the making of this act." *f. 4.*

" That

“ That the under-sheriff of *Middlesex* for the time being shall, six days before the end of every month, deliver to the county-clerk three several lists, each containing the names and places of abode of twelve persons, to be by the said sheriff taken from the freeholders’ book of the said county of *Middlesex*, as suitors to attend the said county-court, for the succeeding month for the several divisions; one list for the hundred of *Ossulston*, one for the hundred of *Isteworth* and *Elthorne*, and one for the hundred of *Edmonton*; and the county-clerk shall cause the said persons in the said lists to be summoned to attend the said court; for each of which the county-clerk shall pay the said under-sheriff four pence, and no other suitor (except the persons so summoned) shall have any voice in the said county-court, held under the authority of this act: and no person shall be liable to be put upon such list to attend the said court as a suitor thereof, oftner than once in every year.”

Under sheriff to deliver every month, three lists of 12 freeholders, to attend.

None to attend more than once in a year.

f. 7.

Precepts in the County-Court.

Yorkshire, } *G. M.* Esquire, sheriff of the county
to wit. } *ty* aforesaid, to *John Doe* and
Richard Roe, my bailiffs of the hundred of *D.*:
I command you, that you summon *Richard Fenn*,
so that he be and appear at my next county-court
to be holden at *York*, in and for the said county, on
Wednesday the day of next,
to answer *John Denn* in a plea of debt (or a plea
of trespass on the case); hereof fail not. Given
under the seal of my office, this day of
1799.

The sheriff's summons on the plaint.

To *Richard Fenn*, *Yorkshire*, to wit. You are
summoned to appear in person, or by some attorney,
at the next county-court to be holden at *York*,
in and for the said county, on *Wednesday* the

Bailiff's summons thereon.

day of _____ next, to
answer to *John Denn* in a plea of trespass on the
case; hereof fail not. Dated this _____ day of
1799.

John Doe, bailiff.

Distringas or at-
tachment.

Yorkshire, *J. G. M.* Esq; sheriff of the county
aforesaid, to, &c. : I command you, that you dis-
train (or attach) *Richard Fenn*, by his goods and
chattels; so that he be at my next county-court
to be holden at *York*, in and for the said county,
on, &c. next, to answer *John Denn* in a plea
of debt, or trespass on the case; hereof, &c.
Dated, &c. as before.

By the same sheriff.

Duces tecum, or
2d or 3d attach-
ment or distrin-
gas.

Yorkshire, *J. G. M.* Esq; sheriff of the county
aforesaid, to, &c. I command you, that you bring
to my next county-court to be holden at *York*, in
and for the said county, on the _____ day
of _____ next, all the goods and chattels
of *Richard Fenn*, which you have distrained by
virtue of a former precept directed to you at the
suit of *John Denn* in a plea of debt (or trespass
on the case); and that you further distrain (or
attach) the said *Richard Fenn*, by his goods and
chattels, so that he be at the next court to be holden
at *York*, on the _____ day of _____ next
ensuing, to answer the said *John Denn* in the
said plea; and have there this precept. Dated, &c.

A venditioni ex-
ponat.

Yorkshire, *J. G. M.* Esq; sheriff of the said county,
to wit. } to *John Doe*, my bailiff of the hundred
of G——, greeting: I command you, that you
expose to sale, a steer appraised at 20 s. of the goods
and chattels of *C. D.* for that the said steer was at-
tached at the suit of *E. F.* in a plea of debt upon
demand for thirty-nine shillings; and at the court
holden on the _____ day, &c. the said *C. D.* altho'
according to the custom of this court, used from
the time to the contrary whereof the memory of
man is not, the said steer is forfeited, and that you
have the money on the next court there to be
holden

holden on the day of, &c. next ensuing,
to satisfy the said *E. F.* of the debt aforesaid, and
in what manner, &c. Dated, &c.

Yorkshire, ff. G. M. Esq; sheriff of the county
aforesaid, to *John Doe, &c.* ———, greeting: A supercedas
upon an attach-
ment or distress-
ga.
Whereas I lately commanded you to attach *C. D.*
by all his goods and chattels, so that he should be
at my court to be held on the day of
to answer *E. F.* in a plea of debt; but
because the said *C. D.* has appeared by *J. S.* his
attorney to answer the said *E. F.* in his plea aforesaid,
therefore I command you entirely to cease
from the execution of the said precept; and if
you have taken or distrained any goods or chattels
of the said *C. D.* by virtue of the said precept,
that then, without delay, you re-deliver them to
the said *C. D.* Dated, &c.

Yorkshire, ff. G. M. Esq; sheriff of the county
aforesaid, to *George Smith, Thomas Hanks, and John
Deane, ———*, greeting: A subpoena, ad
testificand.
I command you and
each of you, that laying all other matters aside,
and notwithstanding any excuse, you and each of
you be in your own proper persons at my next
county-court to be holden on *Wednesday*, the
day of next, to testify and speak the
truth in a certain matter of controversy, depend-
ing in the same court between *L. M.* plaintiff
and *N. O.* defendant, in a plea of trespass on the
case; and herein fail not, at your peril. Dated,
&c.

Yorkshire, ff. G. M. Esquire, sheriff of the coun-
ty aforesaid, to *John Doe* and *Richard Roe*, my
bailiffs of the hundred of *O ———*, greeting: A levam facias.
Because *C. D.* has recovered against *E. F.* thirty shil-
lings in a plea of debt, and one shilling for his
costs and charges, whereof the said *E.* is convicted
in my county-court, by the judgment of the
same court; therefore levy according to custom
the said thirty shillings adjudged in the said court,
and the said one shilling for costs, and have you
that money at the next court, to render to the said
C. D.

C. D. for his said debt and costs; and have there this precept. Dated, &c.

A fieri facias in debt.

Yorkshire, ff. G. M. Esq; sheriff of the said county, to *John Doe* and *Richard Roe*, my bailiffs of the hundred of O——, greeting: I command you, that of the goods and chattels of *C. D.* you cause to be made as well a certain debt of thirty shillings which *E. F.* has recovered in my county-court against him, as thirteen shillings and ten pence, which were adjudged to the said *E. F.* in the same court for his costs and charges by him about his suit in that behalf expended; and have you that money at my next county-court to be holden at *York*, in the said county, on the day of, &c. to render to the said *E. F.* for the debt and damages aforesaid, whereof the said *C. D.* is convicted; and this, &c. Dated, &c.

Fieri facias upon verdict for the defendant.

Yorkshire, ff. G. M. Esq; sheriff of the said county, to, &c. ———, greeting: I command you, that of the goods and chattels of *C. D.* you cause to be made thirty-two shillings and two pence, which were adjudged in my court to *E. F.* for his costs and charges, according to the form of the statute, which he hath been put to, by occasion that the said *C. D.* unjustly prosecuted a plaint in a plea of trespass on the case against the said *E.* in my said county-court as is lately found by a certain jury of the country; and have that money at my next county court to be holden at *York*, on the day of, &c. to render to the said *E.* for his costs and charges aforesaid, whereof the said *C.* is convicted; and this, &c.

A fieri facias upon a non-suit.

Yorkshire, ff. G. M. Esq; sheriff of the county aforesaid, to *John Doe*, &c. greeting: I command you, that of the goods and chattels of *C. D.* you cause to be made fourteen shillings and four pence, which were adjudged to *E. F.* in the said court, before the suitors of the said court, according to the form of the statute in that case lately made and provided, for his damages, for that the said *C.* did not prosecute his plaint lately levied in the said court

court against the said *E.* in a plea of trespass on the case; and have that money at my next court, before the suitors of the said court, to be holden at *York*, on the day of, &c. to satisfy the said *E.* his costs and charges aforesaid, whereof the said *C.* is convicted; and this, &c.

Yorkshire, ff. G. M. Esq; sheriff of the county aforesaid, to *John Doe*, &c. greeting: I command you, that of the goods and chattels of *C. D.* you cause to be made 14 s. 10 d. which in the said court, before the suitors of the same court, were adjudged to *E. F.* for his damages which he had by occasion of a certain trespass done to the said *E.* by the said *C.* at, &c.; and have that money, &c. to satisfy the said *E.* for his damages, whereof, &c.

A fieri facias in trespass.

Yorkshire, ff. G. M. Esq; sheriff of the county aforesaid, to, &c. greeting, &c. were adjudged to the said *E. F.* for his damages which he had by occasion of a certain trespass on the case done to the said defendant at, &c.; and have that money, &c.

A fieri facias in trespass on the case.

Were adjudged for his damages which he had by occasion of certain promises and undertakings made to the said plaintiff, by the said defendant at, &c.; and have that money, &c.

On promises.

It appears to me clearly, that, from these forms, the county-clerk may make his several precepts in every case from the forms of the courts above, only varying the place of appearance and return in the county-court, instead of the returns in the courts above, and the sheriff's name is used instead of the king's, as in a *scire facias*, thus: "*Yorkshire, ff. G. M. Esq;* sheriff of the county aforesaid, greeting: *Whereas A. B.* lately in my county-court holden before me at the castle of *York*, before the suitors of the same court, recovered against *C. D.* &c. Dated under the seal of my office this 4th day of *June*, and in the 39th year of the reign of King *George the Third.*" *Vide Greenwood of Courts*, p. 48.

Sci. fa. after a year and day

If there is a cause depending in a *wapentake* or *hundred-court* or other inferior court *taron*, holden

Took to remove from the hundred-court into the county court,

by

by any lord of a manor, it may be from thence removed into this court by a *tolt*, which comes from the *Latin* word *tollo*, to take away, and is a precept that supercedes all proceedings in those courts depending between the parties therein named, and the steward and bailiff return the record and proceedings thereon to the sheriff, and give notice to the parties to be there on the next court-day.

Pone to remove the cause.

If there be a writ of justices to the sheriff, they may issue a *pone* to remove the cause to one of the superior courts; which writ must be returned thus:

Return to a writ of pone on the back. Dalt. 269.

By virtue of this writ to me directed, I have before the justices of the lord the king of the bench at *Westminster*, the plaint that is in my county-court by virtue of the writ of our lord the king of justices between *A. B.* and *C. D.* of a plea of debt, as it is said, as appears in the schedule to this writ annexed. The answer of, &c.

Schedule.

Yorkshire, } At my county-court held at the castle
to wit. } of *York*, the day of in
the 39th year of the reign of his present majesty.
A. B. complains of *C. D.* of a plea of debt; in testimony of which, *R. L.*, *S. R.*, *T. O.*, and *S. D.*, four lawful men of the said county who were present at the said record, have set their hands and seals, the day and year above-written.

Writ of false judgment.

A. B. complains of *C. D.* of a plea of debt 20 l.

A writ of false judgment lies where an erroneous judgment is given in this court, (being no court of record,) then the party grieved by the judgment may have this writ, and remove all process of the suit into the common bench, and there it shall be examined; if it be found erroneous, the judgment shall be reversed, and the suitors of the court, who gave the judgment, amerced.

Where does not lie.

But it does not lie, but in a court where there are suitors; for if there be suitors, there the record cannot be justified by them. *F. N. B.* 43. *H.*

The return on the writ.

By virtue of this writ to me directed, I have recorded the record of the plaint which was in my county-court, with the process and judgment between

tween the parties within mentioned, and I have prefixed the same day to the said parties that they be before the justices within written, at the day and place within contained, as by this writ I am required; which record and process, and judgment thereon, appear in the schedule to this writ annexed. The answer of, &c.

In the schedule set forth the style of the court, What is to be set forth in the schedule. plaint, (writ of justices,) declaration, &c. to final judgment; then say, In witness whereof I have hereunto set my hand and seal, this day of 1799.

The warning of the parties, is sufficient by reading openly in court the writ, without other notice. *Dalt.* 201.

This writ issues out of the chancery, directed to the sheriff, commanding him to go to such court of some lord or franchise, or hundred, or court-baron or the like (*being no court of record*) where a plaint is sued, or a false judgment is supposed to be given in some suit which hath been in the court; and by this the sheriff is to make record of the same suit, in the presence of the suitors of the same court, and four lawful men of the county; and of this he is to make his certificate into the court above, under the seal, and the seals of four of the suitors of the same court, at the day appointed by the writ. *F. N. B.* 71. *Plow.* 74. *Finch.* 444. It is said nothing but the plaint shall be removed, *Dalt.* 200. though they be at issue. *Finch.* 444. Accedas ad curiam.

If false judgment be given in any other court-baron than in the sheriff's court, then the writ of false judgment is called an *accedas ad curiam*. *Fitz.* 18. d.

A precept is to be made by the county-clerk, to the steward and bailiff of the court where the plaint is, commanding them, that taking with them four discreet and lawful free tenants of the county, to have the record of the plaint between the parties in the writ mentioned, so that the sheriff may have such certificate of the record before the justices at *Westminster*, on the day in the writ mentioned, under County-clerk to make a precept.

der his seal, and the seal of four lawful men of the same court, and that they prefix a day to the parties to be there ready to proceed therein; and have there the names of the said four lawful men, and that precept.

Steward to return.

The steward and four suitors return the precept to the sheriff with the plaint, and all things required, under his seal and the seal of four suitors; the sheriff then returns the writ thus.

Sheriff's return.

By virtue of this writ to me directed, I have been to the court within written, and have in full court caused to be recorded the plea within mentioned, and the same record (as appears in the schedule to this writ annexed) I have before the justices of the lord the king within written, at the day and place within mentioned, under my seal, and the seal of *J. R., C. D. K. B., and E. P.*, four lawful men of my county, of those who were present at that record. And to the parties within written I have prefixed a day, in the writ specified, that they be then ready to proceed in the plea as shall be just, as within I am commanded. The answer of, &c. (a)

By this writ the sheriff to go in person.

By this writ the sheriff is commanded to go in person to the court in the writ mentioned; and that he shall take with him four knights of the same county, and there must require the sight of the plea, and in full court. The sheriff must make a record of the said plea or suit, in the presence of the said knights, and of the suitors of the same court; and he must annex the record so made as a schedule, to the back of the writ: and then he must return and certify the same under his own seal, and the seals of four suitors of that court, at the day appointed in the writ, into the king's court. *Term de ley.* But it seems it may be either the sheriff or under sheriff.

Or thus, if sheriff goes in person and is refused.

Or it may be thus: By virtue of this writ to me directed, I have been in my proper person, taking

(a) Annex a schedule to the writ, the style of the court and the plaint as entered in the same manner as in the return to the pone, p. 268.

with me *I. H., T. H., L. M., I. K., &c.* four good and lawful men of my county, to the court-baron of *G. S., &c.* held at *P.* for the honor of *P.* and have caused the plea aforesaid to be recorded at the day and place within contained, as I am within commanded. Whereupon the suitors of the same court at *P.* aforesaid, in their full court aforesaid, did altogether refuse to let me execute the said writ, or in any manner to intermeddle in the plea aforesaid, whereby I am not able to make execution of this writ. The answer of, &c. *Reg. Judici 263.*

To these writs the sheriff cannot return, that no court was held, except he also return, that he requested the lord to hold one, *Dalt. 205.* then the justices will award a distress, to distrain the lord to hold his court. *Fitz. Return. 21.*

What sheriff may further return.

Upon the writ of false judgment, which is an *accedas ad curiam*, the sheriff must take with him four men to the court-baron or hundred, but that they need not be knights. *Fitz. 18.*

False judgment; need not be knights.

It must be returned under the seal of the sheriff, and the seals of four of the suitors of the same court. *Ibid.*

Returned under seal.

The sheriff returned that he had been at the court, and that the suitors would not record the plea. *Dyer 262.*

Upon this writ, although the plaint or suit be determined, yet the sheriff is to make execution of the writ, he is to require the fight of the plea, and to record the same, and to return the same record with the writ. *Dy. 268.*

Require fight of plea.

The sheriff returned that he came to the court to record the plea, and that the suitors said that there was no such plea. *Fitz. Judg. 13. Nat. Br. 16.* Or that the suitors would not deliver him any record. *Fitz. Proc. 128.* Or that the suitors would not deliver him the record nor suffer him to have it. *Lib. Intr. 342, 343.*

Suitors said no such plea.

In this writ, if the sheriff returneth that the writ came to him so late, that execution of the same

Tardis good.

same

same could not be made, this is a good return : and upon such return the party may have an *alias* directed to the sheriff and a *pluries*. *Lib. Intra.* 345 *d.*

If the plaint is in a hundred or court-baron the sheriff returns thus :

Return by the sheriff where the writ of false judgment or acced. ad curiam is directed to record the plaint out of a hundred-court or court-baron.

By virtue of this writ, taking with me *B. C.*, &c. four lawful men of the said county, I have in my proper person gone to the court of *E.* held before *N.* the day of in the year within written, and in that full court have caused to be recorded the plea within written. And I have ready that record before the justices within written, at the day and place within contained, under my seal and the seals of four lawful men of the same court, who were present at that record, which is to this writ annexed. And I have prefixed a day to the parties named in the said writ, that they be then there ready to proceed in that plea, as shall be just, as by this writ I am required. The answer of, &c.

If the sheriff sends his mandate to the bailiff for execution of the writ, the return is thus :

If there is a bailiff of a liberty, and sheriff sends his mandate, the return is thus.

By virtue of this writ to me directed, I have sent to the bailiff of the liberty of *P. E.* of *A.* of his hundred of *L.* in the county of *N.* who hath full execution of all writs and precepts to be executed within that liberty, and also the return of the same, to whom the execution of this writ doth wholly belong to be made; for that execution thereof cannot otherwise be made thereof in my bailiwick, out of the said liberty; which said bailiff hath answered me thus : That he, taking with him *J. D.*, *E. H.*, &c. four discreet and lawful men of the county aforesaid, hath in his proper person gone to the hundred within written; and in that full hundred hath caused the plea to be recorded, which is in the same hundred, without the writ of the lord the king, &c. which said record he hath sent to me, and which I herewith certify to the justices of the lord the king, within mentioned, at the day and place within contained,

contained, under my seal, and the seals of the aforesaid, J. D., E. H., &c. four lawful men of the same hundred, of those who were present at that record: And I have prefixed the same day to the parties, that they be then there to proceed in that plea as shall be just: and that the residue of this execution appears in a certain schedule to this writ annexed.

D. E. Esq; Sheriff.
T. S. Gent. Bailiff.

Sheriff's Duty respecting the Choice of a Coroner.

THE coroner is a very antient officer at the common law. He is called *coroner*, *coronator*, because he hath principally to do with pleas of the crown, or such wherein the king is more immediately concerned. 2 *Inst.* 31. 4 *Inst.* 471. And in this light the lord chief justice of the King's Bench is the principal coroner in the kingdom, and may (if he pleases) exercise the jurisdiction of a coroner in any part of the realm. 4 *Rep.* 57. But there are also particular coroners for every county of England; usually four, but sometimes six and sometimes fewer. *F. N. B.* 163. This officer is of equal antiquity with the sheriff; and was ordered together with him to keep the peace, when the earls gave up their wardship of the county.

Coroner an antient officer.

Chief justice of England, the principal coroner.

Particular coroners for every county.

He is still chosen by all the freeholders in the county-court, as by the policy of our antient laws, the sheriffs, and conservators of the peace, and all other officers were, who were concerned in matters that affected the liberty of the people; 2 *Inst.* 558. and as verderors of the forest still are, whose business it is to stand between the prerogative and the subject in the execution of the forest laws. For this purpose, there is a writ at common law, *de coronatore eligendo* directed to the sheriff, in which it is expressly commanded, “that in his full county,

Chosen by the freeholders.

Writ de coronatore eligendo directed to sheriff.

“ he cause one other or more, as the case is, to be chosen
 “ in the place of the deceased coroner, who having taken
 “ his oath in the usual manner, may do all things
 “ which belong to the office of a coroner, and cause
 “ such an one to be chosen, as best knoweth and can
 “ attend that office; and conclude, with commanding
 “ the sheriff to certify to the court, the name of the
 “ person chosen.”

Who chosen
formerly.

Who now may
be chosen.

And, in order to effect this the more surely, it was enacted by stat. 3 *Ed. 1. c. 10.* “ That none
 “ but lawful and discreet knights should be chosen;”
 and there was an instance in the 5 *Ed. 3.* of a man
 being moved from this office, because he was
 only a merchant. 2 *Inst. 32.* But, it seems it
 is now sufficient, if a man hath lands enough to
 be made a knight, whether he be really knighted
 or not; *F. N. B. 163.* for the coroner ought to
 have estate sufficient to maintain the dignity of
 his office, and answer any fines that may be set
 upon him for his misbehaviour. *Ibid.* And if
 he hath not enough to answer, his fine shall be
 levied on the county, as a punishment for elect-
 ing an insufficient officer. *Mirr. c. 1. f. 3. 2 Inst.*
 175.

Chosen for life,
but may be re-
moved.

The coroner is chosen for life, but may be re-
 moved, either by being made sheriff, or chosen
 verderor, which are offices incompatible with the
 other, or by the king's writ *de coronatore exonerando*,
 for a cause to be therein assigned, as that he is en-
 gaged in other business, is incapacitated by years
 or sickness, hath not a sufficient estate in the
 county, or lives in an inconvenient part of it.
F. N. B. 163, 164. And by the 25 *Geo. 3. c. 29.*
 extortion, neglect, or misbehaviour, are also made
 causes of removal. *f. 6.*

Name of free-
holders at elec-
tion to be set
down.

The names of such freeholders as are at the
 election of coroners ought to be set down in the
 county-court book, for to certify such their elec-
 tion.

Chosen by writ
in open court.

The coroner is chosen by a writ *de coronatore eli-
 gendo* directed to the sheriff by the freeholders or
 suitors

suitors in open and full court, and is published there; so deriving his authority under the freeholders and not under the crown. By the king's demise he is not out of office as sheriffs are, and after the sheriff is to return and certify into the chancery the election of every such coroner, and their names; likewise the county-clerk in court must administer to the coroner his oath for the due execution of his office. *Greenwood of Courts, 7.*

By the 28 *Ed. 3. cap. 6.* it is enacted, "That all coroners of the counties shall be chosen in the full counties of the most meet and lawful people that shall be found in the same counties, to execute the said office; saved always to the king, and other lords, who ought to make such coroners their seignories and franchises."

The sheriff is to give notice of the day of election to all the market-towns in his county, a week before.

The sheriff of *Oxfordshire* will proceed to the election of a coroner for the said county, in the room of *T. A. esq;* deceased, at the county-court to be held at by adjournment, on *Wednesday* the fourth day of *July* next, at ten o'clock in the forenoon of the same day; at which time and place, the freeholders of the same county, are desired to attend. Put the name of the sheriff.

The vacancy is always declared at a former court, and that is the reason of the word adjournment in the notice. And it is generally fixed on the church-doors.

The election may be at any town in the county, as the sheriff and the candidates agree upon; if no opposition at the usual place where the county-court is held, if at any other place than where the county-court is held, the court to be adjourned to that place.

The sheriff himself is not bound to be present, but the business may be done by his under-sheriff.

When the election begins, proclamation is to be made in this manner, "All manner of persons,

" who have any thing to do in this election of
 " coroner for the county of in the room
 " of esq; deceased, let them draw near
 " and give their attendance."

N. B. In case of a poll, the freeholders are not sworn, but their qualifications, and where they live, are to be entered in the poll-book.

Proclaim.

After they have done giving their votes, then proclaim, " If any one can gainsay why
 " should not be appointed one of the coroners for
 " this county, let him come forth, and he shall be
 " heard, otherwise the sheriff of will declare
 " the said duly elected."

The oath to be administered by the sheriff.

Then administer the oath thus, " You shall
 " swear that you will well and truly serve our so-
 " vereign lord the king's majesty, and his liege
 " people, in the office of a coroner, and as one of
 " his majesty's coroners of this county of
 " and therein you shall diligently and truly do,
 " and accomplish, all and every thing and things
 " appertaining to your office, after the best of your
 " cunning, wit, and power, both for the king's
 " profit, and for the good of the inhabitants with-
 " in the said county, taking such fees as you ought
 " to take, by the laws and statutes of this realm,
 " and not otherwise. So help you God."

**Oath of allegi-
 ance, &c.**

The oaths of allegiance, supremacy, and ab-
 juration, are to be taken, and then the oaths of
 office; when the coroner is elected, and sworn
 into his office, he is to remember the qualifica-
 tion acts, and in due time, to take the sacra-
 ment.

Return to the writ.

" By virtue of this writ to me directed, in my full
 " county-court, held (by adjournment) at *Oxford*,
 " in the county of *Oxford*, on the day of
 " in the year within-written; by the
 " assent of the same county, I have caused *E. H.*
 " esq; to be chosen coroner in the place of the
 " within-named *G.* deceased, which said *E. H.*,
 " as the manner is, hath taken corporal oath, to
 " do and keep those things which to the office of
 " coroner

"coroner in the said county doth belong, as I am within-commanded. The answer of." &c.

In this case of election by freeholders, where the majority cannot be determined by the view, upon the holding up of hands, the sheriff upon the demand of a poll to be taken of the numbers, ought not to deny it; nor ought he to deny a scrutiny into the polls, when properly required, upon a suggestion that non-freeholders had polled: for how otherwise can the majority of freeholders be ascertained? It is an election at common law, and this scrutiny is as incident to inquire into the polls, as numbering of the polls is incident to the holding up of hands; nor can the just majority be otherwise duly discovered or declared. *Freem. 17. 2. Vent. 25. 1 Vent. 206. 2 Lev. 50.*

In case of scrutiny the sheriff ought to grant a poll, and why.

Of Election of Members to serve in Parliament.

THE Commons consist of all such men of any property in the kingdom, as have not seats in the House of Lords; every one of which has a voice in parliament, either personally, or by his representatives. In a free state every man, who is supposed a free agent, ought to be, in some measure, his own governor; and therefore a branch at least of the legislative power should reside in the whole body of the people. And this power, when the territories of the state are small and its citizens easily known, should be exercised by the people in their aggregate or collective capacity. But this will be highly inconvenient, when the public territory is extended to any considerable degree, and the number of citizens is increased. In so large a state as ours, it is therefore very wisely contrived that the people should do that by their representatives, which it is impracticable to perform in person; representatives, chosen by a number of minute and separate districts, wherein all the voters are, or easily may be, distinguished.

What House of Commons consist of.

In this state wisely contrived that the people should do that by their representatives, which they cannot perform in person.

The counties represented by knights, elected by the proprietors of lands.

Citizens and burghesses by freemen, &c.

Numbers of representatives.

The end of a member's coming to parliament.

To advise his majesty.

Not bound to consult his constituents.

The counties are therefore represented by knights, elected by the proprietors of lands; the cities and boroughs are represented by citizens and burghesses, chosen by the mercantile part or supposed trading interest of the nation. The number of *English* representatives is 513, and of *Scots* 45; in all 558; and every member, though chosen by one particular district, when elected and returned, serves for the whole realm. For the end of his coming thither is not *particular*, but *general*; not barely to advantage his constituents, but the commonwealth; "to advise his majesty (as appears from the writ of summons) for certain and urgent causes concerning us, the good estate and commonwealth of this our realm, and of the church of England." And therefore he is not bound to consult with or take the advice of his constituents upon any particular point, unless he himself thinks it proper, or prudent so to do. 4 *Inst.* 14.

Who are ineligible.

No one to sit or vote unless he be 21.

Nor an alien, tho' naturalized. Nor any of the 12 judges. Nor clergymen.

Nor persons attainted of treason or felony.

Sheriffs, mayors, &c.

Persons who have the management of duties, &c.

In order to prevent the mischiefs that might arise by placing this extensive authority in hands that are either incapable, or else improper to manage it, it is provided by the custom and law of parliament, that no one shall sit or vote unless he be 21 years of age. 7 & 8 *W. 3. c. 25.* *Whitelocke c. 50. 4 Inst. 47. Com. Journ. 16 Dec. 1690.* Nor shall an alien naturalized be capable of being a member: 12 & 13 *W. 3. c. 2.* Nor any of the twelve judges. *Com. Journ. 9 Nov. 1605,* because they sit in the Lords' House; nor of the clergy, *Ibid. 13 Oct. 1533, 8 Feb. 1620, 17 Jan. 1661,* for they sit in the convocation; nor persons attainted of treason or felony, *Ibid. 21 Jan. 1580, 4 Inst. 47.* for they are unfit to sit any where. Sheriffs, mayors, and bailiffs of boroughs, are not eligible in their respective jurisdictions, as being returning officers. *Bro. Abr. Parliam. 7. Com. J. 14 April 1614.* In strictness all members ought

ought to be inhabitants of the places for which they are chosen, 1 H. 5. c. 1. but this is repealed by 14 Geo. 3. c. 58. No person concerned in the management of any duties or taxes created since 1692. except commissioners of the treasury, 5 & 6 W. & M. c. 7. nor any of the officers following, (viz. commissioners of prizes, transports, sick and wounded, wine licences, navy, and victualling; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations and their deputies; officers of Minorca or Gibraltar; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, secretaries of state, salt, stamps, appeals, wine licences, hackney-coaches, hawkers, and pedlars,) nor any persons that hold any new office under the crown created since 1705. 6 Ann. c. 7. s. 25. No person having a pension from the crown. *Ibid.* 1 Geo. 1. c. 56. s. 1. If any member accepts an office under the crown, (except an officer in the army or navy accepting a new commission,) his seat is void, but he is capable of being again elected, 6 Ann. c. 7. s. 26-28. That all knights of the shire shall be actual knights, or such notable esquires and gentlemen, as have estates sufficient to be knights, and by no means of the degree of yeomen. 23 H. 6. c. 15. s. 3.

This now is reduced to a greater certainty, by stat. 9 Ann. c. 5. by ordaining that every knight of a shire within England, Wales, and Berwick, shall have a clear estate, of freehold or copyhold, to the value of 600 l. citizen and burgess, or baron of the cinque ports, to the value of 300 l. and any person not so qualified, though returned, his election void. s. 1. (except the eldest sons of peers, and of persons qualified to be knights of shires, and the members of the two universities,) s. 2. 3. which somewhat balances the ascendant which the boroughs have gained over the counties, by obliging the trading interest to make choice of landed men, and of this qualification the member must make oath, and give in the

Except commissioners of the treasury, nor any of the officers following.

Who may be elected.

Knights of shires to be actual knights or notable esquires, such as have estates.

Knights of shires to have 600 l. per annu., clear of freehold or copyhold.

Citizen and burgess, 300 l.

Oath must be made of the qualification, and give particulars of his estate in writing, when he takes his seat.

particulars of his estate in writing, at the time of his taking his seat. 33 Geo. 2. c. 20. *sect. 1.* otherwise his election to be void. But subject to these standing restrictions and disqualifications, every subject of the realm is eligible of common right: though there are instances, wherein persons in particular circumstances have forfeited that common right, and have been declared ineligible for that parliament, by vote of the House of Commons, or for ever, by an act of the legislature. 7 Geo. 1. c. 28.

Contractors not to sit.

No contractor with the officers of government, or with any other person for the service of the public, shall be capable of being elected, or of sitting in the house, as long as he holds any such contract, or derives any benefit from it. 22 Geo. 3. c. 43. It does not extend to contracts with corporations or companies, or to any person to whom the interest of such a contract shall accrue by marriage, or operation of law, for the first twelve months. If disqualified, to forfeit 500 l.; and if any person who engages in a contract with government, admits any member to a share, he shall forfeit 500 l. to the prosecutor.

Qualification of the Electors.

The reason for requiring a qualification.

THE true reason of requiring any qualification with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man, a larger share in elections, than is consistent with general liberty.

Qualification of voters for knights of shires, to have freehold of 40 s. clear of all deduction.

By stat. 8 H. 6. c. 7. & 10 H. 6. c. 2. (amended by stat. 24 Geo. 3. c. 58.) the knights of shires shall be chosen of people dwelling in the same counties, whereof every man shall have *freehold*, to the value of 40 s. by the year, *within the*

the county; which (by subsequent statutes) is to be clear of all charges and deductions (except parliamentary and parochial taxes). These estates must be freehold, that is, for *term of life* at least. No one under 21. 7 & 8 W. 3. c. 25. s. 8. No person convicted of perjury, or subornation of perjury. 2 Geo. 2. c. 24. s. 6. No person in right of any freehold, granted to him fraudulently to qualify him to vote, shall be capable of voting. 10 Ann. c. 23. s. 1. Such grants as contain an agreement to re-convey. Every voter who shall have been in the actual possession or receipt of the profits of his freehold to his own use for 12 calendar months before 18 Geo. 2. c. 18. s. 5. except it came to him within the time by *descent, marriage, marriage-settlement, will, or promotion to a benefice or office*. *Ibid.* Nor in respect of any *annuity or rent-charge*, unless registered with the clerk of the peace 12 calendar months before. 3 Geo. 3. c. 24.

For life at least.
None convicted
of perjury.

Nor in right of
fraudulent con-
veyances.

Actual possession
or receipt for 12
months.

Except by de-
scent.

That in mortgage or trust estates, the person in possession, under the above restrictions, shall have the vote. 7 & 8 W. 3. c. 25. s. 7. That only one person shall be admitted to vote for one house or tenement, to prevent the splitting of freeholds.

Mortgage estates.

Only one person
to vote for one
house, &c.

That no tenant by copy of court-roll, shall be permitted to vote as a freeholder. 31 Geo. 2. c. 14. s. 1.

No tenant by
copy of court-
roll.

No person shall vote in respect of messuages, lands, or tenements, which have not for *six months* before such *election*, been *assessed* towards the *land-tax*, in the name of the voter or his tenant, 20 Geo. 3. c. 17. s. 1. but not to extend to annuities, or fee-farm rents, (duly registered,) issuing out of messuages, &c. assessed as aforesaid.) nor to persons entitled to such messuages, &c. by *descent, marriage, marriage-settlement, devise, benefice, or office*, within 12 months before *election*; but persons entitled to vote, if messuages, &c. have been, within *two years next before election*, assessed to land-tax, in the name of his predecessor or tenant within *two years*

None to vote in
respect of mes-
suages, &c.
which have not
for six months
been assessed to
land-tax.

Not to extend to
annuities, &c.

Husbands enti-
tled to dower in
right of their
next wives.

next before election. s. 2. The second husband of a woman the widow of tenant in fee, or in fee-tail, who is entitled to dower of the clear value of 40 l. or upwards, altho' not assigned or set out, may vote, if he be in actual receipt of the dower, and the estate whence it issues is rated to the land-tax, in the name of the actual owner of the premises, *s. 12.*

No peer hath a right to vote; and if a man who hath a right to vote for two, gives a single vote, he cannot afterwards give a second for another, *4 Com. Dig. 288.*

Election of citizens and burgesses.

As for the electors of *citizens* and *burgesses*, these are supposed to be the mercantile, part or trading interest of this kingdom. But as trade is of a fluctuating nature, and seldom long fixed in a place, it was formerly left to the crown to summon, *pro re nata*, the most flourishing towns to send representatives to parliament. So that as towns increased and grew populous, they were admitted to a share in the legislature. The members for boroughs now bear above a quadruple proportion to those for counties, and the number is increased since *H. 6.* from 300 to 500 exclusive of those for *Scotland*. The universities were in general not empowered to send burgesses to parliament, but *King James* the First, indulged them with the permanent privilege to send constantly two of their own body; to serve for those students who, though useful members of the community, were neither concerned in the landed, nor the trading interest; and to protect in the legislature the rights of the republic of letters. The right of election in boroughs is various, depending entirely on the several charters, customs, and constitutions of the respective places, which has occasioned infinite disputes; tho' now by statute *2 Geo. 2. c. 24.* the right of voting for the future shall be allowed according to the last determination of the House of Commons concerning it. And by stat. *3 Geo. 3. c. 15.* no freeman of any city or borough (other than such as claim by birth, marriage

The right of election in boroughs is various, depending on charters, customs, &c.

or

or servitude) shall be entitled to vote therein, unless he hath been admitted to his freedom 12 calendar months before. The right of election for the city of Coventry, in the freemen having served seven years' apprenticeship, not receiving alms, being sworn and inrolled, 21 Geo. 3. c. 43.

No person shall vote as an inhabitant paying *scot and lot*, who shall not have been so 6 months previous to the election, on forfeiture of 20*l.*; but this is not to extend to persons acquiring possession by descent, nor to persons claiming a right to vote under any other description, than inhabitants paying *scot and lot*. 26 Geo. 3. c. 52.

For the borough of *Cricklade*, 22 Geo. 3. c. 34. who are entitled to vote.

Of proceeding to Election.

The messenger of the great seal is responsible for the due delivery of the writ, and any one may have the carriage of it, to whom he chuses to entrust it; but the statute 7 & 8 W. 3. c. 25. expressly provides, it shall be delivered to the proper officer to whom the execution of the writ belongs, and to no other. *Simon on Elect.* p. 145.

In the counties palatine, the writ issues to the chamberlain, his lieutenant or deputy, who makes his precept to the sheriff; and in that of *Durham*, it issues to the bishop or his chancellor. In the cinque ports, the writ is directed to the warden, except for the election of *Dover*, where it is delivered to the constable of *Dover*. *Ibid.*

The method of proceeding to election of a member is regulated by the law of parliament, and by several statutes made for that purpose.

As soon as the parliament is summoned, the lord chancellor (or if a vacancy happens during the sitting of parliament, the speaker, by order of the house, and without such order, if a vacancy happens by death, or the member's becoming a peer in the time of a recess for upwards of twenty days)

As soon as parliament is summoned, the lord chancellor sends his warrant to the clerk &c. who issues out writs, &c.

days) sends his warrant to the clerk of the crown in chancery; who thereupon issues out writs to the sheriff of every county for the election of all members to serve for that county, and every city and borough therein.

Within two days after receipt of the writ, proclamation to be made of the election, which must begin not later than the 16th day, nor sooner than the 10th.

The act 25 Geo. 3. c. 84. s. 4. enacts, that in every county, the sheriff having indorsed on the back of the writ, *the day on which he receives it*, shall, *within two days after the receipt thereof*, cause proclamation to be made at the place where the ensuing election ought by law to be held, of a special county-court, to be there held, for the purpose of such election only, on any day (*Sunday excepted*) not later from the day of making such proclamation than the 16th day, nor sooner than the 10th: and that he shall proceed in such election at such special county-court, in the same manner as if the said election had been held at a county-court, or at an adjourned county-court, according to the former laws.

How proceedings were before 25 Geo. 3.

Before this statute the sheriff was to proceed at the next county-court that should happen after the delivery of the writ, and if the county-court fell upon the day of delivery, or *within six days after*, he might adjourn to some other convenient time, not longer than *sixteen days*, nor shorter than *ten*, but not to alter the place without consent of all the candidates; and in all such cases, *ten days public notice* must have been given of the *time and place of the election*. 7 & 8 W. 3. c. 23. s. 3.

Shoreham.

In the borough of *New Shoreham* in *Suffex*, where certain freeholders of the county are entitled to vote by stat. 11 Geo. 3. c. 55. the election must be within *12 days*, with *8 days notice*.

Citizens and burgeses.

For the *election of citizens and burgeses*, the sheriff sends his precept under his hand and seal, to the returning officer within the city and borough, directing him, to comply with the substance of the writ, and he is to issue such precept within *3 days* after the receipt of the writ, and deliver the same to the proper returning officer, and no other; who

is

is to indorse the date of the receipt thereof in the presence of the person delivering it. 7 & 8 W. 3. c. 25. s. 1. and proceed to the election within eight days from the receipt of the precept, giving four days notice thereof. *Ibid.*

The notice should express the purpose of the meeting, as well as the time and place, and must not be for a meeting generally. *Simeon on Elea.* 153. What notice ought to express.

If the returning officer die during the poll, his successor may execute and finish. 4 Com. Dig. 29. If sheriff die.

1 Dougl. 113. 138.

Undue influence, being guarded against by the several statutes to prevent bribery, the election is to be proceeded to on the appointed day; the sheriff, or other returning officer, first taking an oath against bribery, and for the due execution of his office: the candidates likewise, if required, must swear to their qualifications; and the electors in counties to theirs; and the electors both in counties, and boroughs, are also compellable to take the oath of abjuration, and that against bribery: How sheriff is to proceed on the day.

And before they vote, to take the oaths of allegiance and supremacy. 7 & 8 W. 3. c. 17. 2 Geo. 2. c. 24. s. 3.

And by 25 Geo. 3. c. 8. all electors for cities and boroughs, shall swear to their names, addition, &c.; and that they are of the age of 21, and not polled before. The election being closed, the returning officer in boroughs returns his precept to the sheriff, with the persons elected, by the majority; and the sheriff returns the whole, together with the writ for the county, and the knights elected thereupon, to the clerk of the crown in chancery before the day of meeting, if it be a new parliament, or within 14 days after, if it be an occasional vacancy; and this under the penalty of 500 l. 9 Ann. c. 5.

If he does not return such knights only as are duly elected, he forfeits by the old statute of H. 6. 100 l. and the returning officer in boroughs for a false return, 40 l. and liable to an action for double damages. But the members returned by him are the sitting members until the House of Commons,

Commons, upon petition, shall adjudge the return to be false and illegal.

The several Acts.

I shall next state the acts of parliament relative to elections for members from 7 H. 4. to the present period, respecting the duty of the sheriff, and returning officer, and afterwards the return of the writ, and indentures taken thereon.

How election of knights ought to be.

By stat. 7 H. 4. c. 15. The election of knights of the shire is to be made in the following manner :

“ At the next county-court after the delivery of the writ, proclamation is to be made by the sheriff of the county, of the day and place the parliament is to assemble, and that all as are there present shall attend at the election of knights of the shire; and then, in full county, a free and indifferent election shall be made;” and after they be chosen, the names of the persons shall be written in an indenture under the seals of them that did chuse them, and tacked to the writ; which indenture so sealed, and tacked, shall be the return. And in the writs of parliament this clause shall be put : “ and your election in your full county made, you shall without delay distinctly and openly certify under your seal, and the seals of them who were concerned in that election, to us, in our chancery, at the day and place in the writ contained (a).”

By stat. 11 H. 4. c. 1. The justices of assize shall have power to inquire of returns made by sheriffs, and if found by inquest that he hath made return contrary to stat. of 7 H. 4. he shall incur the penalty of 100 l. to the king, and the knights unduly returned shall lose their wages.

Every sheriff shall within eight days make a precept to every mayor, &c.

By the 23 H. 6. c. 14. “ Every sheriff, after the delivery of any writ to him, shall make and deliver, without fraud, a sufficient precept,

(a) The stat. 1 H. 5. c. 1. is repealed by 14 Geo. 3. c. 58. and 8 H. 6. c. 7. and the 8, 10, & 23 H. 6. so far as relates to residence of persons to be elected, or of the persons by whom they are to be chosen.
“ under

“ under his seal, to every mayor and bailiff, or to
 “ bailiffs or bailiff, where no mayor is, of the cities
 “ and boroughs within his county, reciting the
 “ said writ, commanding them, if it be a city, to
 “ chuse by citizens of the same city, citizens,
 “ and in the same manner and form, if it be a
 “ borough, by the burgessees of the same, to come
 “ to the parliament. And that the same mayor and
 “ bailiff, or bailiffs or bailiff, where no mayor is,
 “ shall return lawfully the precept to the same she-
 “ riff, by indentures betwixt the same sheriff and
 “ them to be made of the said elections, and of the
 “ names of the said citizens and burgessees by them so
 “ chosen, and thereupon every sheriff shall make a
 “ good and rightful return of every such writ, and of
 “ every return by the mayors and bailiffs, or bailiffs
 “ or bailiff where no mayor is, to him made, in de-
 “ fault forfeits 100 l. with costs: and any mayor
 “ and bailiffs, &c. who shall return other than
 “ those which be chosen by the citizens and
 “ burgessees, forfeits to the king 40 l., and 40 l. to
 “ the person chosen.” *s. 1.*

Every sheriff that maketh no due election of knights in convenient time, viz. every sheriff in his full county between the hours of eight and eleven before noon; and maketh not true return of such elections, forfeits 100 l. to the king, and 100 l. to him that will sue, with costs. To be sued for by such knights within three months after the parliament begun, if not, to him that will sue.

By the 7 & 8 W. 3. c. 25. *s. 1.* “ That as
 “ well upon the calling or summoning any new
 “ parliament, as also in case of any vacancy, the
 “ several writs shall be delivered to the proper of-
 “ ficer to whom the execution thereof doth belong
 “ and to no other person; and that every such
 “ officer, on the receipt of the same writ, shall on the back
 “ thereof, indorse the day he received the same, and
 “ shall forthwith, upon receipt of the writ, make out
 “ the precept or precepts, to each borough, town corporate,
 “ port,

Sheriff making
not due election,
&c.

Writs to be de-
livered to the
proper officer,
who is to indorse
the day when
received, and
make out the
precept.

Precept to be delivered in three days after receipt of the writ.

Officer to indorse the day of the receipt, and give notice of the time of election in eight days.

To take no fee for return.

County-court to be held at the usual place, and proceed to election, unless it fall out in six days after receipt of the writ.

See 25 Geo. 3. 84.

Sheriff, &c. to take the poll, if required, and to appoint a number of clerks.

Name of every freeholder to be set down, and for whom he polls, and a person for each candidate to inspect the clerks.

“port, or place within his jurisdiction, where any member or members are to be elected to serve, or to supply any vacancy, and within three days after receipt of the writ (a), shall by himself, or agent, deliver such precept to the proper officer of every such borough, &c. to whom the execution doth belong, and every such officer on the back of the same, shall indorse the day of his receipt, in the presence of the party, and shall forthwith cause public notice to be given of the time and place of election, and shall proceed to election thereupon, within eight days next after, and give four days notice at least of the day appointed for the election.”

Neither the sheriff or under-sheriff, nor the mayor, or other officer, of any borough, &c. shall pay or take any fee for the making out the receipt, delivery, return, or execution, of the precept. *sect. 2.*

sect. 3. “That upon every election the sheriff of the county shall hold his county-court at the most public and usual place of election, where the same has most usually been for forty years last past; and in case the said election be not determined on the view, with the consent of the freeholders, but a poll be required, then the said sheriff, or under-sheriff, &c. shall proceed to take the said poll, in some open place, by the same sheriff, &c. appointed, and for the proceeding in the said poll, the said sheriff or his under-sheriff, &c. shall appoint clerks, for taking thereof; which clerks shall all take the said poll in the presence of the said sheriff, &c.; and before they begin, every clerk shall, by the said sheriff, &c. be sworn truly and indifferently to take the same poll, and to set down the names of each freeholder, and the place of his freehold, and for whom he shall poll, and to poll no freeholder who is not sworn, if so required by the candi-

(a) Now two days, by stat. 25 Geo. 3. c. 84.

“date

“ dates (which oath the said sheriff, &c. are to
 “ administer); and the sheriff, &c. shall appoint
 “ for each candidate such one person as shall be
 “ nominated to him by each candidate, to be in-
 “ spectors of every clerk who shall be appointed
 “ for taking the poll; and every freeholder, before
 “ he is admitted to poll, shall, if required, take
 “ the oath after-mentioned (which the sheriff, &c. Freeholders to
 “ are hereby authorized to administer),” viz. be sworn.

You shall swear, that you are a freeholder for the Oath.
county of and have freehold lands or be-
reditaments of the yearly value of 40 s. lying at
within the said county of and
that you have not been before polled at this election.

Sec. 5. The sheriff, &c. shall proceed to the Sheriff not to
 polling all the freeholders then present, and not adjourn the
 adjourn the county-court to any other town or court, unless the
 place, without the consent of the candidates, nor candidates con-
 shall delay the election; but proceed in taking of sent.
 the poll, from day to day, without further adjourn-
 ment, without the consent of the candidates, until
 all the freeholders present shall be polled.

Sec. 6. Every sheriff, mayor, &c. shall forth- Copy of the poll
 with deliver to such person as shall desire the same, to be delivered,
 a copy of the poll taken, paying a reasonable charge if desired, pay-
 for writing same; and every sheriff, &c. for every ing for writing.
 wilful offence, shall forfeit to every party aggrieved, Penalty on sher-
 500 l. to be recovered with full costs of suit, by riffs, &c. com-
 action of debt, &c. mitting wilful
offence.

Sec. 10. That the sheriff of *Southampton*, or his Poll may be ad-
 deputy, at the request of one or more of the candi- jouried from
 dates, shall adjourn the poll for *Winchester*, after Winchester to
 every freeholder present is polled, to *Newport* in the Newport in the
Isle of Wight, for the ease of the inhabitants of Isle of Wight.
 the said island.

By 10 & 11 W. 3. c. 7. s. 1. That the sheriff Writs to be re-
 or other officer shall, on or before the day that any turned in four-
 future parliament shall be called to meet, not ex- teen days after
 ceeding *fourteen days* after any election made, the election.
 either in person or by his deputy, make return of
 the same to the clerk of the crown in the high court

Sheriff on return of writ to pay the ancient fees, &c.

and charge the same to the king.

Officer of the cinque ports allowed six days from receipt of writ.

Penalty on sheriff, &c. for not making return.

Every candidate, at the request of another candidate, or of two of the voters, shall take the following oath.

The oath.

of *chancery*, to be filed; and pay 4*s.* for every knight of a shire, and 2*s.* for every citizen, burgess, or baron of the cinque ports, returned; and the sheriff shall charge the same to his majesty, and have allowance in his account.

That the proper officer of the cinque ports shall be allowed *six days* from the receipt of such writ for the delivery of the precept. *f. 2.*

Sec. 3. Every sheriff, &c. who shall not make the returns, shall forfeit 500*l.* one moiety to his majesty, and the other to him that shall sue, to be recovered by action of debt, &c.

By stat. 9 *Ann. c. 5. f. 5.* Every person (qualified by this act) who shall appear as a candidate, or be proposed to be elected to serve as member for any county, city, borough, or cinque port in *England*, &c. shall, on request by any other person who shall stand candidate at such election, or by any two or more persons, having right to vote at such election, take the oath following:

" I A. B. do swear, that I truly and bonâ fide
 " have such an estate in law or equity, to and for my
 " own use and benefit, of or in lands, tenements, or
 " hereditaments, (over and above what will satisfy and
 " clear all incumbrances that may affect the same,) of
 " the annual value of 600*l.* above reprises, as doth
 " qualify me to be elected and returned to serve as a
 " member for the county of _____ according
 " to the tenor and true meaning of the act of parliament
 " in that behalf; and that my said lands, tenements,
 " or hereditaments are lying or being within the
 " parish, township, or precinct of _____ or,
 " in the several parishes, townships, or precincts of
 " _____ in the county of _____ or, in the
 " several counties of _____ (as the case may
 " be)."

If the candidate be for a city, &c. the oath shall relate only to 300*l.* per annum, *mutatis mutandis*.

Sec. 6. And in case such candidate is to serve for any city, &c. the oath shall relate only to the value of 300*l.* per annum, and be taken to the same effect (*mutatis mutandis*).

Sec.

Stat. 7. That the oaths shall be administered by the *sheriff, under-sheriff*, for any such county, or by the *mayor, &c.* to whom it shall appertain to take the poll, or make the return at such election for the same county, &c. or by any two justices of the peace within *England, Wales, and Berwick-upon-Tweed*. And the said *sheriff, &c.* and *justices of the peace*, are required to certify the taking thereof into chancery, or the queen's bench, within *three months* after the taking the same, under the penalty of *100 l.* one moiety to the queen, and the other to such person as will sue, to be recovered with full costs of suit by action of debt, &c.; and if any of the said candidates proposed to be elected shall wilfully refuse, on reasonable request, or at any time before the day upon which such parliament by the writ of summons is to meet, to take the oath, then the election and return of such candidate shall be void. No fee for administering the oath, or filing the certificate, except *1 s.* for administering the oath, *2 s.* making the certificate, and *2 s.* for filing, under the penalty of *20 s.* *Stat. 2.*

The oath to be administered by the *sheriff, &c.* who shall within three months after the taking thereof, certify the same into the queen's bench or chancery, or forfeit *100 l.* one moiety to the queen, the other to him who will sue, &c. with full costs of suit. Candidate refusing to take the oath, the election to be void.

By *stat. 2 Geo. 2. c. 24. s. 1.* That upon every election of any member, every freeholder, citizen, &c. shall, before he is admitted to poll, take the following oath, (or being one of the people called *Quakers*, make affirmation,) in case the same be demanded by either of the candidates, or two of the electors.

Electors of parliament-men to take the following oath, if demanded.

"I A. B. do swear, (or, being one of the people called *Quakers*, I A. B. do solemnly affirm,) I have not received, or had by myself, or any person whatsoever in trust for me, or for my use and benefit, directly or indirectly, any sum or sums of money, office, place, or employment, gift or reward, or any promise or security for any money, office, employment, or gift, in order to give my vote at this election, and that I have not before been polled at this election."

Electors' oaths

Which officer presiding, or taking the poll, is empowered to administer *gratis*, if demanded, on pain to forfeit *50 l.* to any person, to be recovered, with full

Presiding officer to administer it, on forfeiture of *50 l.*

costs of suit, by action of debt, &c. And, if the offence shall be committed in *Scotland*, to be recovered, with full costs, by summary action, or complaint before the Court of Session, or by prosecution before the Court of Justiciary there, and no person shall be admitted to poll, till he has taken the said oath, in case the same shall be demanded.

Sheriff or other returning officer, admitting any to be polled, before sworn, to forfeit 100*l*.

Stat. 2. That if any *sheriff*, &c. shall admit any person to be polled, without taking such oath or affirmation, if demanded, such *returning officer* shall forfeit 100*l*. to be recovered with full costs of suit; and that if any person shall vote or poll at such election, without having first taken the oath, or, if a *Quaker*, having made affirmation, if demanded, such person shall incur the same penalty.

Vo'ters to incur the penalty.

Returning officer after reading the writ, to take the following oath.

Stat. 3. That every *sheriff*, *mayor*, &c. being the *returning officer*, shall, immediately after reading the writ or precept for the election, take and subscribe the following oath, *viz.*

The oath.

" I A. B. do solemnly swear, that I have not, directly nor indirectly, received any sum or sums of money, office, place, or employment, gratuity or reward, or any bond, bill or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use or benefit, or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes." Repealed as to *Scotland*, by 16 Geo. 2. c. 11. s. 18.

Justice of peace may administer the oath.

Which oath, any justice of the peace of the said county, &c. where such election shall be made, or in his absence, any three of the electors, are required to administer; and such oath shall be entered among the records of the sessions of such county, &c.

Penalty of wilful perjury.

Stat. 5. That if any returning officer, elector, or person taking the oath or affirmation, shall be guilty of wilful perjury, or of false affirming, and be convicted, shall incur and suffer the pains and penalties inflicted in cases of wilful and corrupt perjury.

Stat.

Secl. 6. That no person convicted of wilful and corrupt perjury, or subornation of perjury, shall, after such conviction, be capable of voting in future.

Persons convicted, never permitted to vote.

Secl. 9. That all *sheriffs*, &c. shall, immediately after reading such writ or precept, read, or cause to be read, openly before the electors, this act.

The act to be read by the sheriff, &c. after reading the writ.

Secl. 10. That every *sheriff*, &c. for every wilful offence, shall forfeit 50*l.* to be recovered, together with full costs of suit.

Every sheriff, &c. shall for wilful offence, forfeit 50*l.*

By stat. 18 *Geo. 2. c. 18. s. 1.* Upon every election to be made of any knight, every freeholder, instead of the oath or affirmation prescribed to be taken by the 10th of *Ann*, intituled, *An act for the more effectual preventing fraudulent conveyances, in order to multiply votes for electing knights of shires to serve in parliament*, before he is admitted to poll at the said election, shall (if required) first take the oath or affirmation following:

Instead of the oath by 10 of *Ann*, c. 23. another is appointed for freeholders.

" You shall swear, (or, being one of the people called Quakers, you shall solemnly affirm,) that you are a freeholder in the county of _____ and have a freehold estate, consisting of _____ (specifying the nature of such freehold estate, whether messuage, land, rent, tythe, or what else; and if such freehold estate consists in messuages, lands, or tythes, then specifying in whose occupation the same are; and if in rent, then specifying the names of the owners or possessors of the lands or tenements, out of which such rent is issuing, or of some or one of them,) lying or being at _____ of the clear yearly value of 40*s.* over and above all rents and charges payable out of or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above 12 calendar months, or that the same came to you, within the time aforesaid, by descent, marriage, marriage-settlement, devise, or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate has not been granted or made

The oath.

“ to you fraudulently, on purpose to qualify you to give
 “ your vote, and that your place of abode is at
 “ in and that you are 21 years of age, as
 “ you believe; and that you have not been polled before
 “ at this election.”

Which oath the-
 ruff, under the-
 ruff, or clerks
 shall administer.

Which the *sheriff*, &c. is to administer. And in case any freeholder shall commit wilful perjury, and be convicted; and if any person do unlawfully and corruptly procure or suborne any freeholder, or other person, to take the said oath, &c. in order to be polled, whereby he shall commit such wilful perjury, and shall be convicted, he shall incur such penalties as are inflicted by 5 *El. c. 9.* and 2 *Geo. 2.*

Booths to be
 erected at the
 expence of the
 candidates for
 taking polls.

Proportioned to
 the hundreds,
 &c. and not ex-
 ceeding fifteen.

Sheriff to appoint
 a clerk at each
 booth for polling
 at the candidates
 expence.

List of towns,
 &c. for each
 booth.

Of which list
 copies to be given
 at 2 s. each.

Voting at each
 booth, to be re-
 gulated by the
 list.

Sett. 7. That at every election, the *sheriff* shall make, or erect, at the expence of the candidates, convenient booths or places for taking the poll, as the candidates, or any of them, shall, *three days* at least before the commencement of the poll, desire, so as the same do not exceed the number of rapes, lathes, wapentakes, wards, or hundreds within the said county, and not exceeding *fifteen*; and shall affix, on the most public part of the said booths, the names of the rape, wapentake, lathe, ward, or hundred, or rapes, &c. for which such booth or polling place is allotted or designed; and the said *sheriff* shall appoint proper clerks at each of the said booths, to take the poll (which said clerk or clerks shall be at the expence of the candidates, and be paid not exceeding one guinea *per day* each clerk); and the said *sheriff* shall make out a list for each of the said booths, of all the several towns, villages, parishes, and hamlets, lying or being wholly or in part in the rape, &c. for which such booth is allotted, and shall, on request, deliver, a true copy to any of the candidates, or their agents, who shall desire the same, taking for each copy *two shillings*.

Sett. 8. That no *sheriff*, &c. shall admit any person to vote for any lands, &c. sworn by the said oath to be lying at some parish, town, or place, or parishes,

parishes, towns, or places, which parish, &c. is not mentioned in the said list so made out for such booth, &c. unless such lands, &c. lie in some town or place not mentioned in any of the lists so made out.

Exception.

Sec. 9. That the sheriff, &c. shall allow a cheque-book, for every poll-book, for each candidate, to be kept by their respective inspectors, at every place where the poll or such election shall be taken or carried on.

A cheque-book for every poll-book allowed each candidate.

Sec. 10. That no sheriff shall take upon himself to adjourn the court for longer than *sixteen days*.

Adjournment of the county-court.

Sec. 12. That in case any such sheriff, &c. shall wilfully offend against this act, he shall be prosecuted by information, &c.

6 Geo. 2. c. 23. s. 2. is repealed by this act. s. 12. Sheriff, &c. offending, to be prosecuted. Persons demanding to vote for the election of members, if required, to take the oath following, &c.

By 19 Geo. 2. c. 28. s. 1. That every person demanding to vote for such city or town, being a county of itself, in that part of Great Britain called *England*, in respect of any freehold estate, shall, before he is admitted to poll at the said election, (if required,) first take the oath following, viz.

The oath.

" You shall swear, (or, being a Quaker, you shall solemnly affirm,) that you have a freehold estate, consisting of (specifying the nature of such freehold estate, whether messuage, land, rent, tythe, or what else; and if such freehold estate consists in messuages, lands, or tythes, then specifying in whose occupation the same are; and if rent, then specifying the names of the owners or possessors of the lands or tenement, out of which such rent is issuing, or of some or one of them,) lying or being in the city and county, or town and county, (as the case may be,) of
" of the clear yearly value of 40 s.,
" over and above all rents and charges payable out of
" or in respect of the same; and that you have been in
" the actual possession or receipt of the rents and profits thereof, for your own use, above 12 calendar
" months; or that the same came to you within the
" time aforesaid, by descent, marriage, marriage-settlement, devise, or promotion to a benefice in a
" church,

" church, or by promotion to an office; and that
 " such freehold estate has not been granted or made to
 " you fraudulently, on purpose to qualify you to give
 " your vote; and that the place of your abode is at
 " in and that you
 " are 21 years of age, as you believe; and that you
 " have not been polled before at this election."

The oath, &c.
 by whom to be
 administered.
 Wilful perjury,
 and subornation
 of perjury, to be
 punished as the
 acts of 5 Eliz. &
 2 Geo. 2, direct.

Which the sheriff, &c. is required to administer; and in case any freeholder or other person, taking the same, shall commit wilful perjury, and be convicted; and if any person do corruptly procure or suborne any freeholder, to take the said oath or affirmation, whereby he shall commit such wilful perjury, and be convicted, he shall incur such pains and penalties, as are mentioned in stat. 5 Eliz. c. 9. and 2 Geo. 2.

Sheriffs to allow
 a cheque-book
 for every poll-
 book.

That the sheriff of any city or town, &c. shall, at every election, allow a cheque-book, for every poll book for each candidate, to be kept by their respective inspectors, at the place where the poll for such election shall be taken. *f. 6.*

Sheriffs to give
 public notice,
 &c.

That the sheriff shall forthwith, upon the receipt of the writ, cause public notice to be given of the time and place of election, and proceed to election within eight days next after receipt of the writ, and give three days notice at least, exclusive of the day of the receipt of the writ, and of the day of election. *f. 7.*

and to proceed
 to election with-
 in 8 days after
 receipt of the
 writ.

Sheriffs offend-
 ing against this
 act.

That in case any sheriff, &c. shall wilfully offend, he shall be liable to be prosecuted by information or indictment. *f. 8.*

Suits to be com-
 menced within 9
 months.

That every action, &c. shall be commenced within nine calendar months after the fact committed.

Statutes of jeo-
 fails to be allow-
 ed.

That all the statutes of jeofails shall extend to all proceedings in any action, &c. allowed by this act.

Plaintiff discon-
 tinuing his suit,
 &c. shall suffer
 treble costs.

That in case the plaintiff or informer, in any action, &c. shall discontinue or be non-suited, or judgment be given against him, then the defendant shall recover treble costs.

Provided,

Provided, that this act (other than and except such clauses and provisions as are by this act made for or concerning allowing cheque-books, or for or concerning notice to be given of the time and place of election, and proceeding to election thereupon) shall not extend to any city or town, being a county of itself, or to any person where the right of voting, &c. is in respect of burgage tenure, or where such right does not require the same to be of the yearly value of 40s.

Limitation of this act.

By stat. 3 Geo. 3. c. 15. That if any mayor, &c. shall wilfully antedate any admission of any freeman, such mayor, &c. shall forfeit 500 l. to him who shall sue. s. 2.

Penalty of antedating the admission of any freeman, 500l.

The books and papers of admission of freemen to be open for inspection upon demand of a candidate, his agent or two freemen, upon payment of 1s.; and copies and minutes of the admission to be given paying reasonably for writing the same, and the books to be produced, if demanded, at every election on penalty of 100 l. to be recovered by action, &c. with full costs. s. 34. The prosecution to be commenced within one year. s. 5.

Books of admission to be open for inspection.

That the returning officer shall read this act, at the time of election, where the right of election is in the whole, or in part, in freemen as aforesaid, immediately after reading the act of 2 Geo. 2. c. 24.

This act to be openly read by the returning officer, at all elections by freemen, immediately after act 2 Geo. 2. This act not to extend to London or Norwich. No person may vote in elections in right of any annuity unless a certificate be entered with the clerk of the peace, twelve months before election begins.

By stat. 3 Geo. 3. c. 24. That no person shall vote in respect of any annuity or rent-charge issuing out of freehold lands, &c. unless a certificate, on oath, shall have been entered twelve calendar months, at least, before the first day of election, with the clerk of the peace, or other public officer, having the custody of the records within such city, &c.

" I A. B. of *am really and bonâ fide*
 " seized of an annuity or rent-charge, for my own use
 " and benefit, of the clear yearly value of 40s. above
 " all rents and charges payable out of the same, wholly
 " issuing

Oath.

“issuing out of freehold lands, tenements, or hereditaments, belonging to C. D. of *situate,*
 “lying, and being in the parish, township, or place,
 “or in the parishes, townships, or places, of E. in the
 “county of *without any trust, agree-*
 “ment, matter, or thing, to the contrary notwith-
 “standing; and I, or the person or persons under whom
 “I claim, was or were seised of the said annuity
 “or rent-charge before the first day of June 1763.”

And in like man-
 ner with respect
 to such qualifi-
 cations as shall
 come by descent,
 marriage, devise,
 presentation, or
 promotion.

That no person shall vote in respect of any annuity or rent-charge, issuing out of freehold lands, &c. which shall come by descent, marriage, settlement, devise, or presentation to a benefice in a church, or promotion to an office, within twelve calendar months next before such election, unless a certificate, on oath, shall have been entered with the clerk of the peace, or other officer, before the first day of such election, as follows :

Oath.

“I A. B. of *am really and bonâ fide seised of*
 “an annuity or rent-charge, to my own use and benefit,
 “of the clear yearly value of 40 s. a year, above all
 “rents and charges payable out of the same, wholly
 “issuing out of freehold lands, tenements, or heredita-
 “ments, belonging to C. D. of *situate,*
 “lying, and being in the parish, township, or place,
 “or in the parishes, townships, or places, of
 “in the county of *without any trust,*
 “agreement, matter, or thing, to the contrary notwith-
 “standing; and I became seised of the said annuity or
 “rent-charge on the *day of*
 “last past, by descent or otherwise (as the case may
 “happen).”

Officer guilty of
 any neglect or
 misdemeanor,
 forfeits 100 l.

That if any clerk of the peace shall be guilty of any wilful neglect, or fraudulent practice, contrary to this act, he shall forfeit 100 l. to the person who shall sue by action of debt, bill, &c.

Limitation of
 prosecutions.

That no person shall be liable to any forfeiture or penalty, unless prosecution be commenced within twelve months.

Undue election.

By stat. 10 Geo. 3. c. 16. on complaint of an undue election, a precise time is to be fixed for the considering

considering thereof, and the speaker is to give notice thereof and order attendance of petitioners, &c.

But no petition is to be taken into consideration within 14 days after appointment of the committee.

f. 2.

By stat. 25 *Geo. 3. c. 84.* For the better regulation of polls and scrutines, be it enacted, " That
 " every poll demanded at any election for a county,
 " city, &c. shall commence on the day demanded,
 " or on the next day at farthest (unless it happen
 " on a *Sunday*, and then on the day after); and
 " shall be duly proceeded in from day to day,
 " (*Sundays excepted*;) until the same be finished;
 " but so as that no poll shall continue more than
 " fifteen days at most (*Sundays excepted*); and if
 " such poll continue until the *fifteenth day*, then
 " the same shall be finally closed, at or before the
 " hour of *three* in the afternoon of the same day;
 " and the returning officer shall immediately, or
 " on the day next after the final close of the poll,
 " publicly declare the name of the persons who
 " have the majority of votes on such poll, and
 " shall forthwith make a return of such persons,
 " unless the returning officer, on a scrutiny being
 " demanded, shall deem it necessary to grant the
 " same; in which case, it shall be lawful for him
 " so to do, and to proceed thereupon, but so as
 " that, in all cases of a general election, every re-
 " turning officer shall cause a return of a member,
 " &c. to be filed in the crown office, *on or before*
 " *the day on which such writ is returnable*; and
 " every other returning officer acting under (a) a
 " precept or mandate, shall make return at least *six*
 " *days* before the day of the *return* of the *writ*;
 " and so, that in case of any election, and a scru-
 " tiny being granted as aforesaid, then that a
 " return of a member or members shall be made

Poll to begin, at
 latest, the day
 after demanded,

unless Sunday,

and must conti-
 nue but 15 days.

Return to be
 made at the close
 of the poll, or
 day after,

unless scrutiny
 demanded.

Regulations for
 making returns,
 in case of a scru-
 tiny.

(a) The poll being taken, closed and declared, the returning officer must make his return of the persons duly chosen according to the mode prescribed by the writ and statutes relating thereto.

" within

- Objections to voters to be decided alternately. " within thirty days after the close of the poll (or sooner, if the same can conveniently be done)."
Sec. 2. " That when a scrutiny shall be granted, and there shall be more parties than one objecting to votes, the returning officer or officers shall decide alternately, or by turns, on the votes given for the different candidates who shall be parties to such scrutiny, or against whom the same shall be carried on."
- Poll to be kept open seven hours daily. *Sec. 3.* And, in order that electors may have full time to poll, be it enacted, " That all returning officers, unless prevented by any unavoidable accident, shall, during the continuance of the poll, on every day subsequent to the commencement of the same, cause the said poll to be kept open for seven hours at the least, in each day, between eight in the morning and eight at night."
- Closing the poll. The poll-book ought not to be closed until all the voters present, *i. e.* who come in during the continuance of the poll, and offer their voices, have polled. *Simeon on Elect.* 163.
- Time fixed. It is usual for the returning officer to fix a particular time, at a reasonable distance, for closing the poll, which is done by consent and agreement of all parties. *Ibid.*
- If poll be once declared. Where the poll is once declared and acknowledged, the election is complete. And any misconduct of the returning officer is punishable, and always punished by the house. *Ibid.*
- House punish misconduct in officer. The poll, though improperly closed by the returning officer, cannot be continued by the constable, or any other person; if it is, neither the poll nor any parol evidence can be given of votes so taken. *Ibid.* 1 *Dougl.* 191.
- Once poll closed cannot be continued.
- Within two days after receipt of the writ, proclamation to be made of the election, for county, *Sec. 4.* And whereas inconveniences may arise from the time allowed by the laws now in being for proceeding to an election of a knight or knights to serve in parliament, for any county or shire in *England* or *Wales*; be it enacted, " That,

“ That, immediately after the receipt of the writ,
 “ and indorsing on the back thereof the day of
 “ receiving the same, as by law required, it shall
 “ be lawful for the *sheriff* of such county or shire,
 “ and he is hereby required, within *two days after*
 “ *the receipt thereof*, to cause proclamation to be
 “ made at the place where the ensuing election
 “ ought by law to be holden, of a special county-
 “ court to be there holden, for the purpose of
 “ such election only, on any day, (*Sunday excepted*,)
 “ not later from the day of making such de-
 “ claration than the *sixteenth day*, nor sooner than
 “ the *tenth day*; and that he shall proceed in such
 “ election, at such special county-court, in the same
 “ manner as if the said election was to be held at
 “ a county-court, or at an adjourned county-court,
 “ according to the laws now in being; provided,
 “ that the usual county-court for all other pur-
 “ poses, or any adjournment made thereof, shall
 “ take place, be held, and proceeded in, by the
 “ sheriff, or his deputy, and may from time to
 “ time be further adjourned and proceeded in, in
 “ such and the same manner, and at the same
 “ times and places, as if the writ for the election
 “ of a knight or knights of the shire had not been
 “ received.”

which must be-
 gin between tenth
 and sixteenth day
 after proclama-
 tion;

provided, the us-
 ual adjournment
 of the court
 take place.

SECT. 5. “ That upon every election to be made in
 “ Great Britain, Wales, or town of *Berwick-upon-*
 “ *Tweed*, in all cases where no oath or affirmation
 “ of qualification, other than the oaths or affirma-
 “ tions against bribery, or of allegiance, supremacy,
 “ and adjuration, can now by law be required; every
 “ person claiming to give his vote at the said
 “ election shall, (if required,) before he is admitted
 “ to poll, take the oath (or affirmation) follow-
 “ ing:

An oath to be
 taken previous to
 polling.

“ *I do swear, (or, being a Quaker, do affirm,) Oaths*
 “ *that my name is A. B. and that I am*
 “ *(specifying the addition, profession, or trade of such*
 “ *person,) and that the place of my abode is at*
 “ *in the county of* (and if it is a town
 “ *consisting*

" *consisting of more streets than one, specifying what street;)* and that I have not before polled at this election; and that I verily believe myself to be of the full age of twenty-one years."

" Which oath, &c. the returning officer, &c. is authorized to administer."

Returning officers authorized to administer oaths during a scrutiny.

Sec. 6. " That, upon every election, it shall be lawful for the returning officer, if he see cause, during the continuance of any scrutiny granted, to administer an oath to any person consenting to take the same, touching the right of any person having voted at such election, or other matter material towards carrying on such scrutiny."

Poll clerks to take an oath for the faithful discharge of their duty.

Sec. 7. " That, at every election for any city, &c. every person whom the returning officer shall retain as a clerk in taking the poll shall be sworn by such returning officer, truly and indifferently to take the said poll, and to set down the name of each voter, and his addition, profession, or trade, and the place of his abode, and for whom he shall poll, and to poll no person who is not sworn or put to his affirmation, where, by this or any other statute, any oath or affirmation now is or hereafter shall be required; which oath of every such poll clerk the said returning officer is required to administer."

Persons taking, or suborning others to take a false oath, liable to the pains inflicted by 5 Eliz. cap. 9. and 2 Geo. 2. cap. 25.

Sec. 8. " That if any person, in taking any oath or affirmation, shall commit wilful perjury, and be convicted; or if any person shall unlawfully procure or suborne any other person to take any such oath, &c. whereby he or she shall commit such wilful perjury, and shall be convicted, he shall incur such pains and penalties as are inflicted in and by the acts of 5 Eliz. and 2 Geo. 2."

Not to extend to places where particular regulations have been enacted by statute.

Sec. 9. Provided, " That nothing shall extend to, alter, or regulate the mode or time of proceeding at any election of any member for any place where particular regulations, touching the duration of polls and scrutinies, are specially enacted, but that every such election shall be begun

“ begun and carried on in the same manner as if
 “ this act had not been made.”

Sec. 10. “ That if upon any writ *no return*
 “ shall be made to the same *on or before the day on*
 “ *which such writ is made returnable*; or if a writ
 “ shall have been issued and no return shall be
 “ made to the same within *fifty-two days after the day*
 “ *on which such writ bears date*; or if the return
 “ made shall not be a *return of a member or members*,
 “ according to the requisition, but contain special
 “ matters only; it shall be lawful for any persons
 “ aggrieved to petition the House of Commons;
 “ and on such petition, a day and hour shall be
 “ appointed for taking the same into consideration,
 “ and notice in writing shall be forthwith given by
 “ the speaker to the petitioners, and to the return-
 “ ing officer, accompanied with an order to attend
 “ the house, and a select committee shall be ap-
 “ pointed, who are to determine whether any, and
 “ which of the persons ought to have been returned,
 “ or whether a new writ ought to issue; which
 “ determination shall be final.”

When returns
have not been
duly made, a
select committee
may be appointed
conformable
to 10 Geo. 3.
c. 16. and 1 &
Geo. 3. c. 44.

Notice of the
meeting of com-
mittees to be
given to the pe-
titioners and re-
turning officers.

Sec. 12. “ When returning officers cannot be
 “ found, or do not appear at committees, other
 “ persons may be appointed to appear in their stead;
 “ and where more than one petition is presented,
 “ the house to determine whether the returning
 “ officer is to strike off from the list of members
 “ drawn by lot.”

Returning officer
not found.

Sec. 13. “ That if any sheriff, &c. for any
 “ county, city, &c. shall wilfully offend against
 “ this act, he shall be liable to be prosecuted by
 “ information or indictment in the king's bench,”
 &c. or

Returning offi-
cers liable to pro-
secution for of-
fences against
this act.

Sec. 14. “ That if any sheriff shall wilfully
 “ delay, or refuse to return any person who ought
 “ to be returned, such person may, in case it shall
 “ have been determined by a select committee that
 “ such person was entitled to have been returned,
 “ sue the sheriff, having wilfully delayed, neglect-
 “ ed, or refused, duly to make such return, and
 “ every

Returning offi-
cers may be sued
for neglecting to
return persons
duly elected.

Actions to be commenced within one year after the offer ce, or six months after conclusion of proceedings in the house.

Poll may be adjourned from Winchester to Newport in the Isle of Wight, &c.

“ every or any of them, at his election, in any of
“ his majesty’s courts of record at *Westminster*, or
“ the court of session in *Scotland*; and recover
“ double damages with full costs.”

Sec. 15. Provided, “ That every indictment,
“ information, or action shall be found, filed, or
“ commenced within *one year* after commission of
“ the fact, or within *six months* after the conclusion
“ of any proceedings in the House of Commons relating
“ to such election.”

Sec. 16. Provided always, “ That it shall be
“ lawful for the sheriff of *Southampton*, after any
“ poll for the county shall have closed at *Winchester*,
“ and which shall always within the space of *fifteen*
“ days at the most, in the manner above re-
“ quired, to adjourn the poll to *Newport* in the
“ *Isle of Wight*, in case the same shall be required,
“ so that every such adjourned poll shall commence
“ within *four days* from the close of the poll at *Win-*
“ *chester*, and shall not continue longer than *three*
“ days at most.”

The 28 *Geo. 3. c. 52.* respects petitioners complaining of undue elections or return, and the manner of proceeding on such petition.

Election for London if a Poll be demanded.

On all elections by the liverymen and at the ward-motes; presiding officer to appoint a convenient number of clerks to take the poll, &c.

For regulating elections for *London*, the stat. 11 *Geo. 1. c. 18. s. 1.* enacts, That upon every election of a citizen or citizens to serve for the said city of *London*, in parliament, &c. the presiding officers shall, in case a poll be demanded, &c. appoint a convenient number of clerks to take the same; which clerks shall take the said poll in the presence of the presiding officers, and be sworn by them truly and indifferently to take the same, and to set down the name of each voter, and his place of residence or abode, and for whom he shall poll, and to poll no person who shall not be sworn, or, being a *Quaker*, shall not affirm, according to the direction

None to be polled who is not sworn.

direction of this act: and every person before he is admitted to poll, shall take the oath following:

" You do swear, that you are a freeman of London, Liverymen's oath at election.
 " and a liveryman of the company of and have
 " so been for the space of twelve calendar months; and
 " that the place of your abode is at in
 " and that you have not polled at this election.
 " So help you God."

And if any persons shall refuse or neglect to take the oaths hereby appointed to be taken, then the poll or vote of such person or persons, so neglecting, &c. shall be void. *Sec. 1.* On refusal to swear, poll to be rejected.

That at all times, upon every election, every person having a right to vote or poll, before he be admitted to vote or poll thereat shall (if required) first take the oaths in and by an act made in the first year of his majesty's reign [intituled, *An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors*] appointed to be taken, or, being one of the people called *Quakers*, shall, if required, affirm the effect thereof, and if any person or, persons shall refuse to take the said oaths by the said act appointed to be taken, or affirm, that then the poll or vote of such person shall be void; and the presiding officers are authorised to administer the oaths and affirmations; and if any such presiding officer shall refuse or offend in the premises, contrary to this act, every such officer shall forfeit sixty pounds besides costs of suit. The oath &c. to be taken, if required.

That if any person shall wilfully, falsely, and corruptly take the said oaths or affirmations, and be convicted by indictment, &c. or if any person shall corruptly procure or suborn any other person to take the said oaths or affirmations, whereby he shall wilfully and falsely take the said oaths or affirmations, and the person so procuring or suborning shall be convicted, every person so offending shall incur and suffer such penalties, &c. as persons convicted

Presiding officer and sworn clerk to administer the oaths, on penalty of 60*l*.

Penalty on falsely taking the oaths or affirming.

victed of wilful and corrupt perjury at the common law are liable unto. *Sec. 3.*

Presiding officer
how to act if a
poll be demand-
ed.

When the poll
to be finished,
&c.

If a scrutiny be
demanded.

Scrutineers not
to exceed six on
each side.

Scrutinies when
to begin, and
when to be fi-
nished on election
by liverymen,

And to the intent that the poll be duly taken, be it further enacted, that if a poll be demanded the presiding officer shall begin such poll the day the same shall be demanded, or the next day following at furthest, unless the same shall happen on a *Sunday*, and then on the next day after, and shall duly proceed thereon, from day to day (*Sundays* excepted) until such poll be finished, and shall finish the poll at elections by the liverymen within seven days, exclusive of *Sundays*; and the poll at the wardmote within three days, exclusive of *Sundays*, after the commencing the same respectively, and shall, upon adjourning the poll on each day, at all and every the elections aforesaid, seal up the poll-books with the seals, and in the presence of such of the respective candidates, or persons deputed by them, as shall desire the same, and the said poll-book shall not be opened again, but at the time and place of meeting, in pursuance of such adjournment; and after the said poll is finished, the said poll-books being sealed, as aforesaid, shall within *two days* after be publicly opened at the place of election, and truly cast up, and within *two days* after, the numbers of the votes shall be declared at the place of election, by the officer; and if a scrutiny shall, upon such declaration made, be demanded, the same shall be granted and proceeded upon, and the respective candidates shall immediately nominate to the presiding officer, any number of persons qualified to vote at such election, not exceeding six, to be scrutineers for and on behalf of the candidate or candidates, on each side, to whom the presiding officer shall, within six days after such scrutiny demanded, upon request, and at the charge of the candidates, &c. deliver a true copy, signed by such officer of the poll taken; and all scrutinies taken to be made by the liverymen of the said city, shall begin within *ten days* after the delivery of the copies of the said polls, and be proceeded

ceeded on day by day, (*Sundays excepted*;) and shall be finished *within fifteen days* after the commencement of such scrutiny; and thereupon the presiding officer shall, *within four days* after the finishing such scrutiny, publicly declare which of the candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny; and on the election of any officer at the respective wardmotes of the said city, if a scrutiny be demanded, the candidates, &c. shall, *within ten days* next after the receipt of the copy of the polls, deliver to the presiding officer the names in writing of the persons polled, against whose votes they shall object, with objections against each respective name; and the presiding officer shall, *within three days* then next following, at the request and charges of any candidate, or scrutineers, deliver to him or them one or more true copy or copies (signed) of the paper containing such names and objections; and the said presiding officer, *within ten days* then next following (exclusive of *Sundays*) after having fully heard such of the said candidates as shall desire the same, or some person appointed by him or them, touching such objections, shall, at the place of election, openly declare which of the said candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny; and if the said presiding officer shall offend, he shall forfeit 200 l. with full costs of suit, over and above all other penalties inflicted by any other act. *s. 4.*

Scrutinies on
elections at
wardmotes,

True copies of
the objections
against the poll-
ers.

Penalty 200l.
with costs.

That after any election made, and scrutiny taken, the presiding officer shall deliver, under his hand, a true list of the voters disallowed, to any of the candidates, who shall, upon the final declaration of the election, demand the same *within six days* after such demand made, such candidate paying for the same: provided always, that no such list, as is directed, shall be admitted to be given in evidence on any action or occasion whatsoever.

A true list to be
given of the vot-
ers disallowed.

Act. 5.

Mayor to issue precepts to the companies to bring in lists.

That the mayor of the city of *London* for the time being, upon request to him made by any candidate, &c. at any election of a citizen to serve in parliament for the said city, or of a mayor, or any other officer or officers to be chosen by the liverymen thereof, where a scrutiny is demanded and granted, shall issue his precepts as has been usual, requiring the masters and wardens of the livery-companies of the said city respectively, to cause their clerks forthwith to return to him two true lists of all the liverymen of their respective companies; and the said clerks shall return such their respective lists upon oath, *within three days after the receipt of any such precepts*; one of which lists so returned, the said mayor shall forthwith deliver to the candidate or candidates on each side at such election, or to his or their agent or agents. *Stat. 6.*

No persons, a right to vote who have not been upon the livery 12 calendar months, and paid their fines, &c.;

and no person who within two years have been discharged from taxes.

Forfeitures how applied.

No persons shall have a right to vote at any election by the liverymen, who have not been upon the livery 12 calendar months, and who shall not have paid their livery fines, or who shall have received such fines back again in part or in all; or shall have had any allowance in respect thereof; and no person shall have a right to vote who have *within two years* next before requested to be, and have been, discharged from paying taxes, or have within that time received *alms: s. 14.* And all the forfeitures herein shall be distributed, one third to the king, one third to the chamberlain, for the use of the city, and the remaining third to the prosecutor who will sue *within six calendar months after incurred. s. 25.*

For elections of citizens for *Coventry*, see stat. 21 Geo. 3. c. 54.

Of the Return.

When election is closed,

The words of the writ, so far as they relate to the return, are, "*and the names of the knights, citizens, and burgeses so to be elected, you cause to be inserted, in certain indentures, to be thereupon made*" between

“ between you and those who shall be present at such
 “ election, and them at the day and place aforesaid
 “ you cause to come, &c. and that the election in
 “ your full county, so made distinctly and openly,
 “ under your seal, and the seals of those who shall be
 “ present at such election, you do certify to us, in our
 “ chancery, at the day and place aforesaid, without
 “ delay, remitting to us one part of the aforesaid in-
 “ dentures annexed, to these presents, together with
 “ this writ.”

The certificate of the election is required to be the same both in county and borough elections, that is. by indenture, under the seals of the electors, and of the returning officer, who seals a counterpart thereof. This practice has been constantly complied with, and seems analogous to proceedings of inquisition before the sheriff and coroner, who return their inquests under seal. Any other mode of making the return has been held bad, but amendable.

The indenture certifying the election, being duly signed and sealed, must be annexed to the writ, and returned together with it to the clerk of the crown in chancery: and where there is occasion to make another return, the order is, that the return annexed shall be taken off the file, and the indenture of return, made by the legal officer, be annexed to the writ in its stead.

With respect to false returns, *vide* 23 H. 6. c. 14. 7 & 8 W. 3. c. 7. s. 1. made perpetual by 12 Ann. c. 15. s. 1. 1 Wils. 125.; and double returns, see 7 & 8 W. 3. c. 7.; and if no return made, see 25 Geo. 3. c. 84. s. 10. a false or double return may be amended at the bar of the house. *Vide* Simeon 184.

Oxfordshire, } J. P. Esq; sheriff of the county afore-
 to wit. } said, having received his majesty's
 writ, under the great seal of Great Britain, for the
 electing two knights to serve for this county in the
 parliament to be holden at the city of Westminster,
 on the day of next, do, in obedience

Precept for the
 election of two
 members to serve
 in parliament at
 the general elec-
 tion for knights
 of the shire.

to the said writ, and of the several statutes in that case made, hereby proclaim and give public notice, that at a special county-court, which will be held at in and for the said county, on the day of this instant, at ten of the clock in the forenoon, pursuant to the statute in that case made and provided, I shall proceed to such election, when and where all persons interested therein will be heard, and are to give their attendance accordingly, dated the day of 17 J. P. Esq; sheriff.

The indenture.

This indenture made in full county, at a special county-court, for the county of held at in the said county, pursuant to the statute in that behalf made, on the day of in the year of our Lord 17 between J. P. sheriff of the county aforesaid, of the one part, and (here put twenty or thirty of the most respectable names), with many others, freeholders of the said county of of the other part, witnesseth, that by virtue of his majesty's writ under the great seal of *Great Britain*, to the said sheriff directed, and hereunto annexed, for the electing of two knights of the aforesaid county, to serve for the said county, in his majesty's parliament, to be holden at the city of *Westminster*, on the day of next. We therefore, the said sheriff, and the said (twenty or thirty other names as before mentioned), and many other freeholders of the said county, (the major part of the whole county aforesaid,) being this present day, at aforesaid, sworn and examined, according to the force, form, and effect of the said writ, and of divers statutes in that case lately made and provided, and according to the directions of the said writ; have (proclamation of the premises being first made) elected G. H. of in the county of esq; and J. K. of in the said county, esq; the most fit and discreet knights of the shire of the aforesaid county, to attend at the said parliament, giving and granting to the

the said knights full power and sufficient authority, for themselves and the commonalty of the aforesaid county, to do and consent to those things which in his majesty's said parliament, by the common council of the realm (by the blessing of God) shall happen to be ordained upon the affairs in the said writ specified. In testimony whereof, as well the hand and seal of the office of the said sheriff, as also the hand and seal of the other parties above named, are hereunto interchangeably set, the day and year first above written.

J. P. Esq; sheriff.

A. B. - G. H. - N. O.
C. D. - J. K. - P. Q.

This indenture made in full county, at a special county-court for the county of _____ held at _____ in the said county, pursuant to the statute, on _____ the _____ day of _____ in the _____ year of the reign, &c. and in the year of our Lord 17 _____ between _____ sheriff of the county aforesaid, of the one part, and (here put twenty or thirty names), with many others, freeholders of the said county, of the other part, witnesseth, that by virtue of his majesty's writ, under the great seal of *Great Britain*, to the said sheriff directed, and hereunto annexed, for the electing (in the place of _____ esq; who was lately chosen one of the knights for the said county, for his majesty's present parliament, but is now baron _____ of _____ in the said county, and one of the peers of the kingdom of the upper house of the said parliament, and for that reason is removed from the lower house of the said parliament) of one other fit and discreet knight of the aforesaid county, to serve for the said county, in his majesty's said parliament, which, at the time of the issuing the said writ, was holden at his majesty's city of *Westminster*. We therefore, the said sheriff, and the said (here put the names aforesaid), and many others, freeholders of the said

Indenture for returning one knight of the shire for the county, in the room of one who has been called up to the House of Lords.

county, (the major part of the whole county aforesaid,) being this present day, at aforesaid, sworn and examined, according to the force, form, and effect of the said writ, and of divers statutes in that case lately made and provided, and according to the directions of the said writ; have (proclamation of the premises being first made) elected Sir *_____* barr. of *_____* a fit and discreet knight of the aforesaid county, to attend at the said parliament; giving and granting to the said knight full power and sufficient authority, for himself and the commonalty of the aforesaid county, to do and consent to those things which in his majesty's parliament aforesaid, by the common council of the realm (by the blessing of God) shall happen to be ordained upon the affairs in the said writ specified. In testimony whereof, as well the hand and seal of the office of the said sheriff, as also the hands and seals of the other parties above named, are hereunto interchangeably set, the day and year first above written.

J. B. Esq; sheriff.

A. D.

G. H.

C. D.

J. K.

E. F.

L. M.

Precept and return of members to serve in parliament for a borough, directed to the bailiff.

_____, to wit, *G. K.* esq; sheriff of the county aforesaid, to the bailiff of the borough of *_____* in the said county, greeting: Knew ye, that I have received a certain writ of our lord the king to me directed, the tenor whereof followeth in these words; to wit, (*George* the Third, &c. here set forth the writ *verbatim*.) and because the execution of the said writ, as to the borough of *_____* belongs to you; therefore, by virtue of the said writ, I require you, that you forthwith cause one burghers to be elected for the said borough, according to the command of the said writ, and how this my warrant shall be executed, you shall make known to me immediately after the said election made, so that I may certify the same, together with the said writ, and this precept, to our lord the

the king in his *chancery* forthwith. Given under
the seal of my office, the day of 17
By the same sheriff.

(Indorsed.)

The day of at nine o'clock: Re-
ceived this precept from the under-sheriff of the
county of *W. P. bailiff of the said borough.*

Bailiff's indorse-
ment thereon.

Proclamation made on the day of
17 at the usual place within the borough of
R. within mentioned, to proceed to election there
on the day of at 11 of the clock in
the forenoon of the same day.

W. P. bailiff.

The execution of this precept appears in a cer-
tain schedule hereunto annexed.

Return of the
precept.

W. P. bailiff.

The execution of this writ appears in certain
schedules hereunto annexed.

Return to the
writ.

This indenture made at the borough of in
the county of the day of in
the year of the reign of, &c. and in the year
of our Lord 1799; between *G. K. esq;* sheriff of
the said county of the one part, and *W. P. bailiff*
of the said borough, and *C. K. esq;* and *L. M. esq;*
G. H. esq; and *T. L. esq;* and others, burgesses
of the aforesaid borough, by virtue of a certain
precept, under the seal of the said sheriff made,
and directed to the said bailiff, bearing date the
day of instant; have freely and

Indenture.

The persons
must be free citi-
zens, or burgesses
of the town,
having due elec-
tion.

indifferently elected *A. K. esq;* and *G. N. esq;*
burgesses of the borough aforesaid, the most suffi-
cient and discreet to be at the parliament of our
said lord the king, to be holden at *Westminster*,
the day of next ensuing, which said
A. K. and *G. N.* have full and sufficient power
for them the said electors, for themselves and the
commonalty of the said borough, to do and con-
sent to those things which then and there, by the
common council of the kingdom of *Great Britain*
(by the blessing of God) shall happen to be ordain-
ed upon the affairs in the said parliament to be

treated of. In witness whereof, to one part of these presents remaining with the said sheriff, as well the said bailiff, as the said burgessees, have set their hands and seals, and to the other part remaining with the said bailiff and burgessees, the said sheriff hath set his seal, the day and year first above written.

W. B. bailiff.

and twenty-seven others.

Precept to the
mayor of the
city of R. to re-
turn two mem-
bers.

Kent, } *C. B. Esq;* sheriff of the county afore-
to wit. } said, To the mayor of the city of *R.*
greeting. By virtue of his majesty's writ, under
the great seal of *Great Britain*, to me directed,
for the electing of two citizens, to serve for the
city of *R.* aforesaid, in a certain parliament, or-
dered by his majesty, to be holden at his majesty's
city of *Westminster*, on the day of
next ensuing. These are to will and require you,
that (proclamation within the said city of the day
and place of election being first made) you cause
freely and indifferently to be elected, two citizens
of the said city, of the most sufficient and discreet,
by those who at such proclamation shall be pre-
sent, according to the form of the statutes in that
case made and provided; and the names of those
citizens so to be elected (whether they be present
or absent) you cause to be inserted in certain in-
dentures, to be thereupon made, between me and
those who shall be present at such election: and
then, at the day and place aforesaid, that you
cause to come, in such manner that the said citi-
zens, for themselves and the commonalty of the
said city, may have from them full and suffici-
ent power to do and consent to those things
which then and there, by the common council of
the kingdom, (by the blessing of God,) shall happen
to be ordained; but you are not to elect me, or
any other sheriff of this kingdom; and the said
election you are forthwith to certify to me, send-
ing to me one part of the said indentures annexed
to this precept, that I may certify the same to his
majesty, in his chancery; hereof you are not to
fail.

fail. Given under the seal of my office, the
day of in the year of the reign of
king *George* the Third, and in the year of our
Lord 17 By the same sheriff.

Received of the within-named sheriff this pre-
cept, by the hands of Mr. *A. B.* on *Saturday* the
day of 17 at half past nine
of the clock in the forenoon, by me,
J. J. mayor of *R.*

The execution of this precept appears in a cer-
tain schedule hereunto annexed.

The return of
the precept to
the sheriff.

J. J. mayor of *R.*

This indenture made, &c. between, &c. wit-
nesseth, that by virtue of a warrant to me directed,
from *G. B.* esq; sheriff of the county of *R.* for
the electing and choosing two (citizens) men of
good understanding, wit, knowledge, and discre-
tion, for causes concerning the weal public of the
realm, to be at his majesty's high court of parlia-
ment, to be holden at his city of *Westminster*, on
the day of next ensuing; I, *J. J.* mayor
of the city of *R.* with the whole assent and consent
of the rest of the citizens there, have made choice
and election of *G. H.* of, &c. esq; and *J. K.*
of, &c. esq; to be citizens for our said city of *R.*
to attend at the said parliament, according to the
tenor of the said warrant to me directed in that be-
half. In witness whereof, I have to these presents
set our common seal of our said city, the day and
year first above written.

Indenture of
election by a
mayor.

This indenture made, &c. between *H. A.* Esq; By the constables and burghers
high sheriff of the county of of the one
part, and *H. T.* and *W. S.* junior, and constables
of the borough and parish of *A.* in the said
county of *B.* and *F. L.* esq; *R. C.* gent. (with
forty others named,) and others the burghers and
inhabitants of the said borough of *A.* of the other
part; witnesseth, that by virtue of a precept to
the said constables directed, and delivered by the
said sheriff, under the seal of his office in that be-
half;

By the constables and burghers.

half; they the said constables, burghers and inhabitants, have, of their full consent, duly chosen Sir *J. W.* bart. and *S. M.* esq; two burgesses, fit and discreet men to serve for the said borough in the parliament, to be holden at his majesty's city of *Westminster*, the day of now next ensuing, according to the tenor of the said precept, giving, and by these presents granting, to the said two burgesses so chosen, full power, for themselves and the commonalty of the said borough, to do and consent as in the said precept is specified. In witness whereof, to one part of these presents remaining with the said sheriff, they the said constables, burghers and inhabitants, have hereunto set their hands and seals; and to the other part remaining with the said constables, the said sheriff hath set the seal of his office, the day and year first above written.

Precept from the sheriff of Middlesex to the bailiff of Westminster for the election of one citizen for the said city.

Subscribed by the said constables, and 47 others. *Middlesex, to wit.* Sir *C. A.* knight, and Sir *R. G.* knight, sheriff of the said county to the bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter* at *Westminster* in the said county, greeting. Know, that I have received a certain writ of our lord the king to me directed, the tenor whereof followeth (here state the writ *verbatim*); and because the execution of the said writ belongs to you, therefore by virtue of the said writ I require you, that you forthwith cause a citizen to be elected for the said city in the place of the said *P. W.* according to the command of the said writ; and how this my warrant shall be executed, you shall make known to me immediately after the said election made, so that I may certify the same, together with the said writ, and this precept return to our said lord the king, in his chancery forthwith. Hereof fail not: This is your warrant, given under the seal of my office this day of 17

By the same sheriff.
The

The execution of this writ appears in a certain Return of precept.
 schedule hereunto annexed.

I. C. esq; bailiff.

This indenture made in the liberty of *Westminster* in the county of *Middlesex* the _____ day of _____ in the _____ year of the reign of, &c. between Sir *C. Z.* knight, and Sir *R. G.* knight, sheriff of the county of *Middlesex*, of the one part, and *I. C. esq; bailiff* of the liberty of the dean and chapter of the collegiate church of *St. Peter, Westminster*, in the said county, Sir *I. C.* baronet, Sir *C. D.* knight of the most honourable order of the Bath, the honourable *W. L., G. S., F. R., F. H.*, and many others citizens, burgesses, and inhabitants of the city, town and borough of *Westminster*, of the other part, *witnesstb*, that by a certain precept directed from the said sheriff to the bailiff, and sewed to this indenture, (proclamation in the said precept first mentioned, and of the day and place, as in the said precept is directed, first being made,) the citizens who were present at the said proclamation have freely and indifferently, according to the form of the statute in that case made and provided, and according to the tenor and effect of the aforesaid precept and of the writ in the said precept recited, chosen one citizen of the most discreet and sufficient of the city and liberty aforesaid, (that is to say,) the honourable *E. C. esq;* to which said *E. C.* so elected, the aforesaid citizens have given and granted full and sufficient power, for themselves and the commonalty of the city, town, borough, and liberty aforesaid, to do and consent to those things which at the said parliament by the common council of the said kingdom (with God's assistance) shall happen to be ordained upon the affairs in the said precept specified, according to the form and effect of the said precept. In witness whereof, as well the said sheriff, as the aforesaid bailiff, citizens, burgesses, and inhabitants of the city, town, borough, and liberty aforesaid, to these indentures their seals have interchangeably put, the day and year first above mentioned.

This

Indenture for
return of citi-
zens and burge-
ses, taken from
Dalt. 336.

This indenture made, &c. witnesseth, that by virtue of a warrant to me directed from Sir *A B.* knight, sheriff of the county of *Cambridge*, for the electing and chusing of two burgeses, men of good understanding, wit, knowledge, and discretion, for causes concerning the weal public of the realm, to be at his majesty's high court of parliament, to be holden at *Westminster*, the day of next coming, I, *A B.* mayor of the borough or town of *Cambridge*, with the whole assent and consent of the rest of the burgeses there, have made choice and election of *C. D.* of esq; and of *I. D.* of esq; to be burgeses for our said borough of *Cambridge*, to attend at the said parliament, according to the tenor of the said warrant to me directed in that behalf. In witness whereof I have to these presents set our common seal of our said borough, the day and year first above written.

Chester, two
knights and two
burgesses for the
city.

By stat. 34 & 35 H. 8. c. 13. s. 4. The county palatine of *Chester* shall have two knights, and likewise two citizens to be burgeses for the city of *Chester*, to be chosen by process to be awarded by the chancellor of *England*, unto the chamberlain of *Chester*, his lieutenant or deputy; and likewise process to be made under like form as is used within the county-palatine of *Lancaster*, or any other county and city where shall be knights and burgeses of parliament. *Vide stat. 18 Geo. 2. c. 18. s. 12.*

Sheriff, against
election, to cause
seven tables to be
made, at the
costs of the can-
didates.

By stat. 10 Ann. c. 23. s. 7. The sheriff of *Chester*, against every election of knights of the shire, shall cause seven tables, and no more, to be made at the costs of the candidates, within the shire-hall of the county, for taking the poll, viz., two at the upper end, two at each side, and one at the lower end of the hall.

Durham, two
knights, two
for the city.

By stat. 25 Car. 2. c. 9. The county-palatine of *Durham* may have two knights for the county, and the city of *Durham* two citizens, to be burgeses for the same city, to serve in parliament, to be

be elected by writ awarded to the *lord bishop of Durham*, or his *chancellor* of the county, and precept thereupon to the bishop, or his temporal chancellor to the sheriff: the elections of knights to be made by the greater number of freeholders, as in other counties, and the election of burgesses for the city of *Durham*, to be made by the major part of the mayor, aldermen, and freemen, which knights and burgesses shall be returned by the sheriff, into the chancery, upon the like pains as the sheriff of any other county. *Stat. 18 Geo. 2. c. 18. s. 2.*

For the county to be chose by freeholders, as in other counties.

City to be chosen by the mayor, &c.

By *stat. 2 Will. & M. stat. 1. c. 7. s. 1.* Whereas the lord wardens of the cinque ports have claimed, as of right, a power of nominating to each of the pinque ports, the two ancient towns and their members, one person whom they ought to elect as a baron or member of parliament, contrary to the antient usage and freedom of elections, "It is declared, that all such nominations are contrary to law, and void." *s. 2.*

Cinque ports.

For all parliaments two knights shall be chosen for the shire of *Monmouth*, and one burgess for the borough of *Monmouth*, the burgesses fees to be levied as well within the borough of *Monmouth*, as within all other antient boroughs within the said shire. *27 H. 8. c. 26. s. 28.*

Wales, 2 knights to be chosen for the shire of *Monmouth*; one burgess for the borough.

One for every of the shires of *Brecknock*, *Radnor*, *Montgomery*, and *Denbigh*, and for every other shire within *Wales*; and for every borough being a shire town, except *Merioneth*, one burgess; fees to be levied as well of the shire towns, as of all other antient boroughs within shires. *s. 29.*

One for shire of *Brecknock*, &c. and every other shire.

All the king's subjects in *Wales* shall find at all parliaments, knights, citizens, and burgesses. *34 & 35 H. 8. c. 26. s. 110.*

All the king's subjects in *Wales* shall find knights, &c.

Town of *Haverfordwest* one burgess at every parliament. *s. 111.*

Haverfordwest.

The sheriff in the next county-court after deliverance of the writs for levying the knights' wages, shall make proclamation, that the coroners and every chief constable of the peace, and the bailiffs

For assising and levying of knights' wages, sheriffs to make proclamation.

bailiffs of every hundred, and all others which will be at the assessing of the wages, shall be at the next county; and the sheriff, under-sheriff, coroner or bailiffs, shall be there at the same time, on pain of 40 s.; at which time the sheriff, in presence of them and of the suitors in full county, shall assess every hundred to pay a certain sum for the wages; so that the whole sum of all the hundreds do not exceed the sum due: and after that in same county shall assess every village to a certain sum, so that the whole of the towns within any hundred do not exceed the sum assessed upon the hundred. And the sheriffs, nor none other officer, shall levy more of any village than what thereunto they were assessed; and if any do assess any hundred or village otherwise than aforesaid, forfeit 20 l. to the king, and to any man that will sue 10 l. The sheriffs shall levy the money assessed upon the villages, as hastily as they well may, and the same shall deliver to the knights, upon the said pains. 23 H. 6. c. 10.

For payment of wages in Wales

The stat. 34 & 35 H. 8. c. 13. f. 1. gives power to every of the twelve shires of *Wales* and in the county of *Monmouth*, to levy the knights' fees and wages, and to pay the same within two months after the writ delivered, and in default to forfeit 20 l. one moiety to the king, and the other who sues. If default be for longer than two months, to forfeit 20 l. every month.

Mayor, &c. shall levy and pay wages to burgesses.

Every mayor, bailiff, and other head officers of cities and towns in the said twelve shires, and *Monmouth*, within like space of two months after receipt of writ shall levy and pay the wages to their burgesses, under like pain. f. 2.

Rates for the burgesses in Wales.

Provided, two justices of the peace in every shire in *Wales* and *Monmouth* shall have power to tax every city and town for the rates that the cities and boroughs shall pay towards the burgesses within the shire, &c. which rates shall be again rated on the inhabitants of the cities and boroughs aforesaid, and mayor, &c. collect the same. f. 4.

It

It appears that in *Ed. 3d's time* 4 s. a-day was Former wages allowed. allowed a knight of a shire, and 2 s. for a citizen or burghers. 4 *Inst.* 16. But now it seems 13 s. 4 d. Present wages. and 10 s. for a baron or burghers. *Dalt.* 344. and the sheriff may distrain the goods of the town, or any of the town, for the wages of a knight, or the cattle; *Br. Distr.* 95. *Dalt.* 345.; and may sell the same. *Ibid.*

The stat. 34 *H. 8. c. 24.* excuses the inhabitants of the county of *Cambridge*; and the manor of *Burlewai* in *Madingly* is charged with 10 l. yearly for ever, for the wages of the knights. Cambridgehire excused.

As to the Return.

If the sheriff be *negligent* in making return, he shall be amerced or punished by stat. 5 *R. 2. c. 4.* Negligent return.

By the stat. 10 & 11 *W. 3.* If a sheriff make not a return on or before the parliament is to meet, or in convenient time, not exceeding 14 days, after election on a new writ, he shall forfeit 500 l., a moiety to the king and a moiety to the informer.

False Return.

By stat. 11 *H. 4. c. 1.* Justices of assize may inquire of returns made to writs of parliament, and if found by inquest that the return is contrary to 7 *H. 4. c. 15.* the sheriff shall incur 100 l. to the king.

But by the stat. 6 *H. 6. c. 4.* the sheriff may traverse such inquest of office, before the justices of assize. Traverse inquest.

By stat. 23 *H. 6. c. 15.* If any sheriff make a return contrary to that or other statutes of election, &c. he shall incur the penalty of stat. 8 *H. 6. c. 7.* and pay to every person chosen and not duly returned, 100 l. with costs, by action of debt against the sheriff, his executors, &c. by the party grieved, if he sue in *three months* after the beginning of the parliament, or in his default, by any that will sue. Returns made contrary to the other stat. incur two penalties. Suit to be in three months.

And

Mayor, for false return, forfeits 40*l.* and 40*l.* to the person chosen and not returned.

And if any mayor, &c. return to the sheriff any *not duly chosen*, he shall forfeit 40*l.* to the king, and 40*l.* to every person chosen and not returned, to be recovered *ut supra*; and if any returned be put out, and another be put in his place, he that is put in his place, if he take upon himself to be knight, citizen, or burgess, forfeits 100*l.* to the king and 100*l.* to him put out, to be recovered, &c.

False return is against law, may recover damages.

By stat. 7 & 8 *W.* 3. c. 7. continued by stat. 12 & 13 *W.* 3. c. 3. s. 5. and afterwards by stat. 12 Ann. 1 sess. c. 15. made perpetual, a *false return* is against law, and any making, or procuring it, may be sued by the party grieved, who shall recover *double damages*, with costs.

All contracts to procure a return, void.

All contracts, &c. to procure a return are void, and he who makes them forfeits 300*l.*, one third to the king, a third to the poor, and one third to the informer; and a return contrary to the last determination of the house, is a *false return*. Ibid. Any officer who wilfully, maliciously, and falsely returns more persons than he ought, forfeits *double damages* with costs to the party grieved, who may sue the officer, or him who procures such return, at his election.

Return contrary to the last determination of the house, is a false return.

House expects sheriff to return according to law, and will not give him directions.

The house expects the sheriff to make a return according to law, and will not give him directions in case of difficulty; tho' the mayor to whom the precept was directed dies, and yet the burgesses go to election, and part return one by one in due turn, and the other part return another by another in due turn. 9 *Jac.* 1699.

Remedy for false Return, &c.

Debt lies.

If a sheriff makes a *false return*, debt lies for the 100*l.* upon stat. 23 *H.* 6. c. 15. *Plowd. Comm.* 118. 130.

So on stat. 7 & 8 *W.* 3.

So an action lies upon the stat. 7 & 8 *W.* 3. c. 7. for a *false return*. *Lut.* 185. If the plaintiff makes his case pursuant to the statute. *Salk.* 304.
6 But

But an action does not lie for a false return, if it be not founded upon some statute. *Salk.* 505.

Nor since the stat. 7 & 8 W. 3. c. 7. where the return was conformable to the house of commons. *Lutt.* 189.

Double damages may be recovered for any false return, tho' there is not resolution of the house of commons relating to the right of election to that place. 1 *Wils.* 125. *Wynne v. Middleton.*

It is said an action at common law does not lie for a double return. 2 *Vent.* 37. *Salk.* 503. 3 *Lev.* 29. 2 *Lev.* 114. But *Willes C. J.* said, an action at common law will lie for a false, or for a double return; for there is *damnum cum injuria* in both cases. 1 *Wils.* 127.

The courts of *Westminster* are not bound by resolutions of the house of commons relating to actions at common law, for such returns; and the party may proceed there notwithstanding the order of the house. *Per Willes C. J. ibid.*

For any offence against 25 *Geo.* 3. c. 84. the returning officer is made liable to prosecution by information or indictment: and if he neglect or refuse duly to return any person, who ought to be returned, for any county, &c. every such person, in case it shall have been determined by a select committee appointed, that such person was entitled to have been returned, may sue the sheriff, &c. and shall recover double damages, with full costs.

s. 24.

But not if not founded on some stat.

Nor if conformable to house.

Double damage for false return.

Double returns.

An action at common law will lie for false or double return.

Courts at Westminster are not bound by resolutions of the house relating to actions at common law.

Returns after determination by a select committee.

A List of the Counties, Cities, and Boroughs of England, in the Order in which their Representatives are called over in the House.

Bedfordshire.

Bedford.

Berkshire.

Reading

Abingdon

Windsor

Wallingford.

Bucks.

Buckingham

Wycomb

Aylesbury

Marlow

Wendover

Agmondestham.

Grampound

Camelford

Penryn

Tregony

Bosfinney

St. Ives

Fowey

St. Germans

Mitchell

Newport

St. Mawes

Callington.

Cumberland.

Carlisle

Cockermouth.

Derbyshire.

Derby.

Devonshire.

Ashburton

Tiverton

Dartmouth

Okehampton

Honiton

Plymouth

Beeralston

Plympton

Totnes

Barnstaple

Tavistock

Exeter.

Cambridgeshire.

Cambridge, Un.

Cambridge, T.

Cheshire.

Chester.

Cornwall.

Launceston

Liskeard

Leftwithiel

Truro

Bodmyn

Helston

Saltash

East-Looe

West-Looe

Dorsetshire.

ELECTION OF MEMBERS.

325

Dorsetshire.

Dorchester
Lyme
Weymouth & Melcomb
Bridport
Shaftsbury
Wareham
Corfe-castle
Poole.

Herefordshire.

Hereford
Leominster
Weobly

Hertfordshire.

Hertford
St. Alban's.

Huntingdonshire.

Huntingdon.

Durham.

Durham.

Kent.

Ebor, or Yorkshire.

Aldborough
Boroughbridge
Beverley
Hedon
Knaresboro'
Malton
Northallerton
Pontefract
Richmond
Ripon
Scarborough
Thirsk
York
Kingston.

Rochester
Queensborough
Maidstone
Canterbury.

Lancashire.

Lancaster
Preston
Liverpool
Wigan
Clitheroe
Newton.

Leicestershire.

Leicester.

Essex.

Colchester
Malden
Harwich.

Lincolnshire.

Stamford
Grantham
Boston
Grimby
Lincoln.

Gloucestershire.

Tewksbury
Cirencester
Gloucester.

Middlesex.

Westminster
London.

Monmouth.

ELECTION OF MEMBERS.

<i>Monmouthshire.</i>	Bishops-castle.
Monmouth.	<i>Somersetshire.</i>
<i>Norfolk.</i>	Taunton
Lynn	Ivelchester
Yarmouth	Milborne
Thetford	Wells
Castle Rising	Bridgwater
Norwich.	Bath
	Minehead
<i>Northamptonshire.</i>	Bristol.
Peterborough	<i>Southampton, or Hants.</i>
Northampton	Winchester
Brackley	Portsmouth
High. Ferrers.	Newport
<i>Northumberland.</i>	Yarmouth
Morpeth	Newtowne
Newcastle-upon-Tyne	Lymington
Berwick.	Christchurch
	Andover
<i>Nottinghamshire.</i>	Whitchurch
East Retford	Petersfield
Newark	Stockbridge
Nottingham.	Southampton.
	<i>Staffordshire.</i>
<i>Oxon.</i>	Stafford
Oxford, Un.	Tamworth
Oxford, City	Newcastle
Woodstock	Litchfield.
Banbury	<i>Suffolk.</i>
<i>Rutlandshire.</i>	Ipswich
<i>Shropshire.</i>	Dunwich
Shrewsbury	Orford
Ludlow	Aldeburgh
Bridgnorth	Sudbury
Wenlock	Eye
	Bury.
	<i>Surrey.</i>

Surrey.

Gatten
Haslemere
Blechingly
Reigate
Guildford
Southwark.

Suffex.

Horsham
Bramber
Shoreham
Midhurst
E. Grinstead
Steining
Arundell
Lewes
Chichester
Seaford.

Warwickshire.

Warwick
Coventry.

Westmoreland.

Appleby.

Worcestershire.

Evesham
Droitwich
Bewdley
Worcester.

Wiltshire.

New Sarum
Devizes
Marlborough
Chippenham
Calne
Malmesbury
Cricklade
Hindon
Old Sarum
Heytesbury
Westbury
Wotton Bassett
Ludgershall
Wilton
Downton
Great Bedwin.

Yorkshire, see Ebor.

Barons of the Cinque Ports.

Hastings
Winchelsey
Rye
Romney

Dover
Sandwich
Hithe.

For Wales.

Anglesey	I	The borough of	I
Beaumaris	I	Flint	I
Brecknock	I	Glamorgan	I
The borough of	I	The borough of	I
Brecknock	I	Cardiff	I
Caermarthen	I	Merionethshire	I
The borough of	I	Montgomery	I
Caermarthen	I	The borough of	I
Caernarvon	I	Montgomery	I
The borough of	I	Pembroke	I
Caernarvon	I	The borough of	I
Cardigan	I	Pembroke	I
The borough of	I	The borough of	I
Cardigan	I	Haverford West	I
Denbigh	I	Radnor	I
The borough of	I	The borough of	I
Denbigh	I	New Radnor	I
Flint	I		

Juries.

Trial by jury
esteemed one of
the chief ex-
cellencies of this
constitution.

THE trial *per pais*, or by a jury of one's country, is justly esteemed one of the chiefest excellencies of our constitution; for what greater security can any person have in his life, liberty or estate, than to be sure of not being divested of, or injured in any of these, without the sense and verdict of "twelve honest and impartial men of his neighbourhood?" And hence we find the common law herein confirmed by the great charter, 9 H. 3. "No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties or free customs, or be outlawed or exiled, or any otherwise destroyed, nor we will not pass upon him, but by lawful judgment of his peers, to or by the law of the land." *Fortesc. 2, c. 25. Co. Litt. 155.*

This

This trial hath been used time out of mind in this nation, and seems to have been coeval with the first civil government thereof. Some have endeavoured to trace the original of juries up as high as the *Britons* themselves, the first inhabitants of our island; but certain it is, that they were in use among the earliest *Saxon* colonies, this institution being ascribed by Bishop *Nicholson*, *de jure Saxanum*, p. 12. to *Woden* himself, their great legislator and captain. In *England* we find mention of them so early as the laws of king *Ethelred*, and that not as a new invention. *Sp. L. b. 30. c. 18.* Its establishment in this island, though for a time greatly impaired and shaken by the introduction of the *Norman* trial by *battel*, was always so highly esteemed and valued by the people, that no conquest, no change of government, could ever prevail to abolish it. *Vide Spelm. Gloss. verbo Jurata. Glanv. lib. 2. c. 7.*

This trial hath been time out of mind.

Its establishment in this country so highly esteemed, that no conquest, &c. could ever abolish it.

Trials by jury in civil causes are of two kinds; extraordinary and ordinary.

In civil causes two kinds.

The first species of extraordinary trial by jury is, that of the *grand assize*, instituted by king *Henry* the second, instead of the barbarous and unchristian custom of duelling. For this purpose a writ *de magna assisa eligenda* is directed to the sheriff, *F. N. B. 4.* to return four knights, who are to elect and choose 12 others to be joined with them, and these all together form the grand assize, or great jury, which is to try the matter of right, and must consist of sixteen jurors. *Finch. Law. 412. 1 Leon. 303.*

Grand assize, first species of extraordinary trial.

Another species of extraordinary juries, is to try an attain, which is a process commenced against a former jury, for bringing in a false verdict, and consists of 24 of the best men of the county, who are to hear and try the goodness of the former verdict: this is now disused, a better remedy for the parties being adopted.

Trial on attain the second.

With

Ordinary trial.

Venire part.

Sheriff, by virtue
of this writ, il-
lows his precept
to his bailiff.

Return of ven.
and distringas.

With regard to the ordinary trial by jury in civil cases, it is this: when the parties are at issue to the country, "the sheriff is commanded that he cause to come before the king at Westminster, twelve free and lawful men of the body of his county, by whom the truth of the matter may be the better known, and who are neither of kin to the plaintiff or defendant, to recognize of the truth of the issue between the parties;" which writ is made returnable before the trial; therefore the jury must unavoidably make a default. For which reason a compulsive process is now awarded against the jurors; in the king's bench called a *distringas*, in the common pleas a *habeas corpora juratorum*, commanding the sheriff to distrain them by their lands and goods, or to have their bodies that they may appear in court on the day appointed by this writ.

By virtue of this writ, the sheriff issues his precept to his bailiff, to summon the jury to be on the day, and at the place therein mentioned; which being done, the sheriff returns the writ executed to the court, with a panel annexed of the names and places of the jurors so summoned, on a piece of parchment.

The writ of *venire* and *distringas*, as also the *ha. corp. jurat.* are returned thus:

The execution of this writ appears in the panel annexed. The answer of J. B. Esq; sheriff. Middlesex, } The names of the jury between John to wit. } Denn, plaintiff, and Richard Fenn, defendant, of a plea of debt.

Hundred of O.

John Doe of B. peruke-maker, (here insert the 48 jurors summoned to appear, then at the foot say,)

Summoners are, { John Doe
and
Richard Roe.

Issues upon each of them, 40 s.

A copy

A copy of the names are to be made on strong paper, to be put in a box with the additions, as in the panel to be delivered to the marshal.

But if the sheriff be not an indifferent person, as if he be a party in the suit, or be related by either blood or affinity to either of the parties, he is not then trusted to return the jury; but the *venire* shall be directed to the coroners, who in this, as in many other instances, are the substitutes of the sheriff, to execute process when he is deemed an improper person. If any exception lies to the coroners, the *venire* shall be directed to two clerks in court, or two persons of the county named by the court, and sworn. *Co. Litt.* 158. a. 2 *Roll. Abrid.* 671. *Fortesc. de Laud.* c. 25. And these two, who are called *Elifors*, shall indifferently name the jury, and their return is final.

If sheriff be not indifferent, command to return the jury.

Elifors.

With respect to trial on the *criminal side*, it may be observed, that the founders of the *English laws* have with excellent forecast contrived, that no man should be called to answer to the king for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow-subjects, the *grand jury*; and that the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of *twelve* of his equals and neighbours, indifferently chosen, and superior to all suspicion. So that the liberties of *England* cannot but subsist so long as this *palladium* remains sacred and inviolate; not only from all open attacks, (which none will be so hardy as to make,) but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial, by justices of the peace, commissioners of the revenue, and courts of conscience.

Trial on criminal side.

The liberties of England cannot but subsist.

What has been said of juries in general, and the trial thereby in civil cases, will greatly shorten the present remarks, with regard to the trial of criminal suits, indictment, informations, and appeals.

When

When prisoner has pleaded, sheriff must return a panel of jurors.

If proceedings in K. B.

But before commissioners of oyer and terminer.

Misdemeanors.

How many sheriff to return on grand inquest.

When a prisoner, on his arraignment, has pleaded not guilty, and upon his trial hath put himself upon the country, which country the jury are, the sheriff of the county must return a panel of jurors, *liberos et legales homines de vicineto*; that is, freeholders without just exception, and of the visne or neighbourhood; which is interpreted to be of the county where the fact is committed. 2 Hal. P. C. 264. If the proceedings are before the court of king's bench, there is time allowed between the arraignment and the trial, for a jury to be impanelled by writ of *venire facias* to the sheriff, as in civil causes; and the trial in the case of a misdemeanor is had at *nisi prius*, unless it be of such consequence as to merit a trial at bar; which is always invariably had when the prisoner is tried for any capital offence.

But before commissioners of oyer and terminer and gaol delivery, the sheriff, by virtue of a general precept directed to him beforehand, returns to the court a panel of 48 jurors, freeholders of 10*l.* per annum, to try all felons that may be called upon their trial at that session; and therefore, it is there usual to try all felons immediately, or soon after their arraignment; but for misdemeanors, security is usually given to appear, at the next assize or session to try the traverse, giving notice to the prosecutor of the same.

The sheriff must return more than twelve for the grand jury; and generally an odd number, as 17, 19, or 21, are sworn to prevent the inconvenience of an equal number of voices, on a division, to retard finding a bill, though 12 are to agree, or it will be void.

Forty-eight of the grand inquest, each to have 80*l.* per annum, land, are to be summoned for York assizes, and 48 at the sessions. 7 & 8 W. 3. c. 32.

§. 8. Whereby it is enacted, that the sheriff of every county shall return a panel of jurors, to be summoned to try all felons that may be called upon their trial at that session; and therefore, it is there usual to try all felons immediately, or soon after their arraignment; but for misdemeanors, security is usually given to appear, at the next assize or session to try the traverse, giving notice to the prosecutor of the same.

and W.

The Acts relating to Jurors.

IT appears by the stat. 13 *Ed. 1. c. 28.* That in one assize, no more shall be summoned than 24; and old men above 70, and such as be sick at the time of the summons, or not dwelling in that county, shall not be put in juries or petty assizes; and if such assizes and juries be taken out of the shire, none shall pass in them but those that may dispend 40*s.* yearly at least, except such as be witnesses in writings; neither shall this statute extend to great assizes; and if the sheriff or bailiff offend, damages shall be awarded to the parties grieved and amerced, and justices assigned to take assizes shall have power to hear thereof.

In one assize, no more than 24; old men above 70, and sick or not dwelling in the county, are not to be put on juries.

By stat. 21 *Ed. 1.* No sheriff, under-sheriff, &c. shall put in any recognizance that shall pass out of their proper bailiwicks, any bailiff (except he have lands to the yearly value of 100*s.*); nor shall impanel in juries (except he have lands, &c. to the yearly value of 40*s.*) 28 *Ed. 1. stat. 3. c. 9.* They are not to be suspected nor procured. 25 *Ed. 3. c. 4.*

Jurors to have 40*s.* in feehold, which pass on trials.

By 42 *Ed. 3. c. 11.* Sheriffs shall array the panels in assizes four days before the sessions of the justices; and bailiffs of franchises shall make their answer six days before the session; and sheriffs shall put in the most substantial people, worthy of credit and not suspect, and the nearest.

Sheriffs to array the panels before sessions, what time to return, and sort of persons.

Where either party is an alien born, the jury, *Alien.* for offences, (except treason,) shall be one half *denizens*, and the other *aliens*, (if required, and so may be forthcoming in the place,) for the more impartial trial. But where *both* are *aliens*, the jury are then to be *denizens*:

Every juror returned for the trial of any issue or cause, ought to have these three properties:

1. To be dwelling most near to the place where the question is moved, or where the lands do lie.
2. To be most sufficient, both for understanding and competency of estate.

Properties of jurors.

3. To

3. To be least suspicious, but one indifferent as he stands unsworn, and then he is accounted *liber et legalis homo*, and that otherwise he may be challenged. Co. Litt. 1562b.

Sufficiency of freehold in the county.

They must have sufficiency of freehold in that county where the cause of action ariseth: and must be of the shire, and some of the hundred where the land lies, or where the fact is supposed to be done.

Who are exempt.

Apothecaries within London and seven miles thereof, being free of the company, and country apothecaries, who have served seven years apprenticeship, are exempted from serving on juries by stat. 6 & 7 W. 3. c. 4. made perpetual, 9 Ann. c. 8. So are dissenting teachers qualified under the toleration act, 1 W. 3. c. 18. f. 11. Also quakers, 7 & 8 W. 3. c. 34 f. 6. Clergymen cannot be impanelled on juries, *Lomb.* 396. So are all seamen duly registered, 7 & 8 W. 3. c. 34. f. 6. exempted.

All jurors to have 10l. per annum.

It appears by several statutes, that jurors were to have freeholds from 40 s. to 4 l.; but the statute of 4 W. & M. c. 24. f. 15. enacts, That all jurors (other than strangers upon trials, *per medietatem linguæ*) shall have 10 l. by the year of freehold, or copyhold, or ancient demesne, or in rent, fee-simple, fee-tail, or for life, for trial of issues joined in the king's bench, common pleas, or exchequer, or before justices of assize, or nisi prius, oyer and terminer, gaol-delivery, or quarter sessions, in any county of England. In Wales, 6 l. a-year, and the sheriff shall not return any person, unless he have 10 l. or 6 l. respectively by the year, at least in the county, on pain of 5 l. to their majesties.

Welsh jurors 6l.

Not to return unless he has been six days summoned.

Saving to cities their right,

No sheriff, &c. shall return any person to have been summoned, unless he has been so six days before the day of appearance, nor take reward to excuse any juror, on pain of 10 l. to their majesties. s. 16. Saving to all cities, boroughs, and towns

towns corporate, their ancient usage of returning jurors. *f. 17.* But it shall be lawful to return any person upon the *tales* in *England*, who shall have within the county 5*l.* by the year, and not otherwise. *f. 18.* In *Wales*, 3*l.* by the year. *f. 19.* No fee to be taken by any sheriff for return of *tales*, on pain of 10*l.* to the king and informer.

By 7 *W. 3. c. 32. f. 3.* If a full jury does not appear, sheriff shall, upon awarding the *tales*, return freeholders or copyholders of the county, who shall be returned on some other panel to serve at the same assizes, and not others, if so many out of the other panels be present, or can be found, and if any so returned shall wilfully withdraw from the service, the judge to fine them.

Tales.
If a full jury do not appear, others returned on some other panel to serve on the tales.

And that all sheriffs of counties may be the better informed of persons qualified, who are to be returned for trials of issues joined in the courts of chancery, king's bench, common pleas, or exchequer, or to serve upon juries at assizes, sessions of *oyer and terminer*, general goal-delivery, and sessions of the peace; be it enacted, That all constables, tythingmen and head-boroughs of towns in each county, or their deputies, shall yearly, at quarter sessions, in the week after the feast of *St. Michael* the Archangel, upon the first day of the said sessions, or upon the first day that the said sessions shall be held by adjournment, at any other particular division or place, return, and give a true list in writing of the names and places of abode of all persons within the respective places for which they serve, qualified to serve upon such juries, with their titles and additions, between the age of one-and-twenty years, and the age of seventy years, to the justices of the peace in open court; which said justices, or any two of them, at the said sessions, in the respective counties, ridings, or divisions, shall cause to be delivered a duplicate of the aforesaid returned list, by the clerks of the peace of every county or riding, to the sheriffs or their deputies, on or before the first day of *January* next

Constables to return to the sessions lists of jury-men, with their places of abode, and titles.

Between the age of 21 and 70.

No sheriff to impanel persons not named in the said lists.

Penalty.

Jurors how to be summoned.
Summons to be made by the sheriff under seal, six days before the juror to serve.
In case of absence, notice to be left under officer's hand.

Return to the justices good excuse to the sheriff, who may plead the general issue, in case action brought.

next following, and cause the said lists to be fairly entered into a book, by the clerk of the peace, to be by him provided and kept amongst the records of the said court of sessions; and no sheriff shall impanel or return any person, to try any of the issues joined in any of the said courts, or to be or serve in any jury, at the assizes, sessions of *oyer and terminer*, gaol-delivery, or sessions of the peace, that shall not be named or mentioned in the said list; and any constable, tythingman, or headborough failing at any time to make the return aforesaid, shall forfeit five pounds to his majesty and successors, to be recovered by bill, plaint, or information. *f. 4.*

And that the summons of any person qualified shall be made by the sheriff, his officer or lawful deputy, *six days* before, at the least, shewing to every person so summoned, the warrant under the seal of the office wherein they are appointed to serve; and in case any juror so summoned be absent from the usual place of his habitation at the time of such summons, in such case notice of such summons shall be given, by leaving a note in writing under the hand of such officer, containing the contents thereof, at the dwelling-house of such juror, with some person there inhabiting in the same. *f. 5.*

And to the end that sheriffs may not incur any penalty, to suffer any damage by summoning or returning any person named in the lists or books of jurors, transmitted to them from the respective quarter sessions, as aforesaid, for not having such estates as qualifies such persons to be jurors; be it enacted by the authority aforesaid, That the said return to the said justices shall be a good excuse and bar in law for the said sheriff for such summons and returns; and if any action or information shall be brought or prosecuted against any sheriff for such return, the said sheriff may plead the general issue, and give this act in evidence; and if the plaintiff be nonsuited, discontinue his action, or if
a verdict

a verdict be given for the defendant, or a *noli prosequi* be entered in any information, or a verdict pass for the defendant thereupon, the plaintiff or informer shall pay treble costs; and if the said sheriff, his deputy, bailiff, &c. shall summons and return any freeholder or copyholder, to any of the aforesaid services, otherwise than as aforesaid, or neglect his or their duty in the service of them required, or excuse any person for favour or reward, or allow of any writ of *non ponendis in assizes & juratis*, or other writ, to excuse or exempt any person or persons, from the service of any jury, under the age of 70; such sheriff, &c. shall forfeit 20*l.*; to be recovered by the party grieved, or whom shall sue for the same, in any of the courts of record at *Westminster*, by action of debt, &c. *s. 6.*

Penalty on the
sheriff neglecting,
or making undue
return.

That no person shall be returned or summoned to serve upon any jury at the assizes, or general gaol-delivery, to be holden for the said county of *York*, or at any sessions of the peace, to be holden for any part thereof (the city of *York* and county of the said city, and town and county of *Kingsdon* upon *Hull* excepted) above once in four years; and every sheriff of the said county for the time being, shall prepare and keep a book or register, wherein the names of all such persons who have served as jurors, with their additions and places of abode, and the times and places of such their services, shall be alphabetically entered and registered; which books, &c. shall from time to time be delivered over to the succeeding sheriff of the said county, within ten days after he shall be sworn into his office; and every juror who shall be summoned, and shall serve at any the said assizes, general gaol delivery, or sessions aforesaid, shall and may, at the end of every such assize, and general gaol delivery, or sessions aforesaid, repair to the sheriff or undersheriff of the said county for the time being, to have his and their names entered in the said book, or register, kept for the purpose aforesaid, of which he shall have a certificate, upon his immediate re-

In Yorkshire
jurymen to serve
but once in four
years.

City and Hall
excepted.

Sheriff of York
to register the
names of all who
serve on juries in
a book, and juror
may have his
name entered,
and certificate
gratis.

quest, *gratis*, from the sheriff, or under-sheriff, for the time being, testifying such his attendance and service done. *f. 7.*

One panel of 48 freeholders, &c.

And no more than 10 panels of 24.

That only one panel, consisting of forty-eight freeholders and copyholders, and no more, (each person having 80 *l.* land *per annum*;) shall be returned to serve on the grand inquest; and no more than 10 panels, consisting of 24 jurors in each panel, shall be returned to serve upon trials in civil causes, at any assizes to be holden for the said county of *York* (except where special juries are directed); and that at no one quarter sessions of the peace, to be holden for the said county, or within any of the ridings within the same, or in any place where such sessions of the peace shall be holden by adjournment, or otherwise, within the same county, shall be returned above the number of forty persons, to serve either upon the grand inquest or other service there. *f. 8.*

Inhabitants of Westminster exempted from serving in *Middlesex*.

That the said inhabitants of the city and liberty of *Westminster* shall be, and are hereby exempted from serving in any jury at the sessions, before the justices of the peace for the county of *Middlesex*. *f. 9.*

Neither of the 2 acts to give longer time for summoning juries, than by law required.

Nor for return of writs, &c.

Provided always, that this act, nor the act of 7 & 8 *W. 3.* shall not extend to give or require any longer time for the summoning of any juries that are to try any issues joined in any of the said courts, that are tryable by jurors of the city of *London*, or county of *Middlesex*, than was by law required before the making of the said act; nor shall extend or be construed to give any longer time, or other day for the return of any writ, precept or process of *venire facias*, *habeas corpora* or *distringas*, for the summoning, attaching or distraining of any jury to appear, than was by law required before the making the said act: but that where there shall not be *six days* between the awarding of such writ, precept or process, and return thereof, every juror may be summoned, attached or distrained to appear at the day and time therein mentioned.

Every juror to appear at the time appointed.

mentioned or appointed, as he might have been before the making of the said act. /s. 11.

Provided, that this act shall not extend to the city of *London*, nor to any other county of any city or town, nor to any town corporate that have power by charter to hold sessions of gaol-delivery, or sessions of the peace for such town. /s. 12.

Cities &c. excepted.

By stat. 1 *Ann.* stat. 2. c. 13. /s. 3. it is enacted, that no person interested in such estate as will qualify him to serve on juries, of the clear yearly value of 150*l.* or of any greater yearly value, shall be returned and summoned to serve upon any jury, at any sessions of the peace holden for any part of the county of *York*, upon the penalty of 20*l.* to be forfeited by any sheriff, under-sheriff, &c. making such return, to be recovered to and for the use of any person that will sue for the same, in any of the courts of record at *Westminster*, by action of debt, &c.

Persons having 150*l.* per annum in *Yorkshire* not to serve at the sessions.

By 3 & 4 *Ann.* c. 18. /s. 3. it is enacted, that if any sheriff of the said county of *York* refuse or neglect to provide and keep such book or register, as in the 7 & 8 *W.* 3. is directed, or shall refuse or neglect to enter therein the names of the persons who served as jurors in any of the assizes or general quarter sessions of the peace, to be held in or for the said county, or any of the ridings therein, in or during the time he shall be sheriff of the said county, with the additions and places of abode, and time and places of such their services, in such manner as in and by the said recited act is directed, or shall refuse or neglect, within 10 days after the next succeeding sheriff of the said county shall be sworn into his office, to deliver over to such succeeding sheriff, as well all and every the books and registers that shall be made or prepared in the year wherein he shall have served sheriff, as also all such other books or registers as were prepared in the sheriffwick of any of his predecessors, sheriffs of the said county, within 4 years then next before,

Penalty on sheriff of *York* not keeping a book of jurors' names.

and which were delivered over to him by any of his said predecessors, or shall refuse or neglect to make and deliver, by himself, or his under-sheriff, such certificate *gratis*, as in the said recited act is mentioned, that then every such sheriff of the said county of *York*, so refusing or neglecting in all or any of the cases aforesaid, shall for every such offence forfeit the sum of one hundred pounds; one moiety to her majesty, and the other to such person or persons as shall sue in any court of record at *Westminster*, by action of debt, &c.

Or returning one person of finer than once in 4 years.

That if any such sheriff of the said county, for the time being, his under-sheriff, &c. shall knowingly summon or return any person or persons to serve on any jury or juries, at any the said assizes or sessions of the peace, who shall, within four years before such summons or return, have served on any jury at any the said assizes or sessions held within the said county, or any the ridings therein, and shall not, upon producing of such certificate or certificates, as aforesaid, to the officer or person so summoning, or to the said sheriff, &c. discharge the said summons or return, and thereof give notice to the party summoned six days before such assizes or sessions of the peace, at the which such person shall be summoned or returned to appear, that then the said sheriff, &c. summoning or refusing to discharge, as aforesaid, shall forfeit to the party summoned 20 *l.*, to be recovered with full costs of suit. *s. 4.*

This act is continued by 10 *Ann. c. 14.* with 7 *W. 3. c. 32.* And by stat. 10 *Ann. c. 14. s. 5.* the statute of *W. 3. c. 32.* shall be construed to extend, not only to any sessions of the peace to be holden for any of the ridings within the county of *York*, but to any sessions that shall be holden by adjournment, and he shall not be thereby exempted from serving at the assizes for the county of *York*.

Lists to be made from the parish rates and fixed on the church doors.

By stat. 3 *Geo. 2. c. 25. s. 1.* it is enacted, The persons required, 7 & 8 *W. 3. c. 32.* by a clause in 3 & 4 *Ann. c. 18.* to give in, or who are by this

this act to make up lists of the names of persons qualified to serve on juries, shall (on request to any parish officer, who shall have in his custody any of the rates for the poor or land tax) have free liberty to inspect such rates, and take the names of such freeholders, copyholders, or other persons qualified to serve on juries, dwelling within their precincts, and shall yearly, 20 days at least before the feast of *Saint Michael*, upon two or more *Sundays*, fix upon the door of the church, &c. a true list of all such persons intended to be returned to the quarter sessions, and leave a duplicate of such list with a churchwarden, chapel-warden, or overseer of the poor; and if any person, not qualified, shall find his name mentioned in such list, and the person required to make such list shall refuse to omit him or them, the justices at their quarter sessions, on satisfaction from the oath of the party complaining, or other proof that he is not qualified to serve, to order his name to be struck out.

That if any persons, required by the said acts to return any such list, shall wilfully omit any person whose name ought to be inserted, or insert any who ought to be omitted, or shall take any reward for omitting or inserting any person, he shall, for every person so omitted or inserted, forfeit 20 s. on conviction before one or more justices, where such offender shall dwell, upon the confession of the offender, or proof by one or more credible witness on oath, one half to the informer, the other to the poor of such parish for which the list is returned; and in case such penalty shall not be paid within five days after conviction, the same shall be levied by distress and sale of goods, by warrant from one or more justices returning the overplus, if any there be; and the said justice shall, in writing, certify the same to the justices at their next general quarter sessions, which shall direct the clerk of the peace to insert or strike out the name; and duplicates of the lists, when delivered at the sessions, and entered by the clerk of the

To be made from the rates in each parish.

And yearly fixed upon church doors,

Persons not qualified may be relieved at the quarter sessions,

Wilfully omitting, or inserting wrong persons, forfeits 20 s.

Duplicates of the lists to be transmitted to the Sheriff,

peace, shall, during the sessions, or within ten days after, be transmitted by the clerk of the peace to the sheriff, and such sheriff shall take care that the names be entered alphabetically, with their additions and places of abode, and every clerk of the peace neglecting his duty therein, shall forfeit 20 s. to such person as shall prosecute, until the party be convicted upon an indictment at the quarter sessions. *s. 2.*

Sheriff, &c. returning any person whose name is not in the duplicate,

or clerk of assize recording appearances, when the party did not appear, to be fined,

That in case any sheriff, &c. shall summon and return any persons to serve on any jury, before the justices of assize, or *nisi prius*, or judges of the said great sessions, or the judge or judges of the sessions for the said counties palatine, whose name is not inserted in the duplicates so transmitted to him by the clerk of the peace; or if any clerk of assize, judge's associate, or other officer, shall record the appearance of any person so summoned and returned, who did not really and truly appear; then any judge or justice of assize, or *nisi prius*, &c. shall, upon examination, in a summary way, set such fine or fines upon such sheriff, &c. for every such person so summoned and returned as aforesaid, and for every person, whose appearance shall be so falsely recorded, as the said judge, &c. shall think meet, not exceeding 10 l., and not less than 40 s. *s. 3.*

Justices of assize, &c. may fine sheriff, &c. for returning jurors irregularly.

Shall not extend to Middlesex.

4 Geo. 2. c. 7. *s. 3.*

That no persons shall be returned as jurors to serve on trials at any assizes, or *nisi prius*, &c. who have served within the space of *one year* before in the county of *Rutland*, of *four years* in the county of *York*, or of two years before in any other county, not being a county of a city or town; and if any sheriff shall wilfully transgress therein, any judge of assize, or *nisi prius*, &c. may, on examination and proof of such offence, in a summary way, set a fine or fines upon such offender, not exceeding 5 l. *s. 4.*

Sheriff, &c. to enter the names of those who have served;

That the sheriff, &c. shall register the names of such persons as shall be summoned, and serve as jurors at any assizes, &c. alphabetically, and also the time

time of their services; and every person so summoned and attending, or serving as aforesaid, shall (upon application to such sheriff) have a certificate, testifying such his attendance or service done; which certificate the said sheriff is to give without fee, and the said book shall be transmitted by such sheriff to his successor. *s. 5.*

That no sheriff, &c. shall take any reward to excuse any person from serving on juries, and that no officer appointed to summon juries shall summon any person to serve thereon, other than such whose name is specified in a mandate signed by such sheriff or under-sheriff; and if any sheriff shall wilfully transgress in any the cases aforesaid, any judge, &c. may, on examination and proof of such offence, in a summary way, set a fine upon any person so offending, not exceeding 10*l.* *s. 6.*

It shall be sufficient for any constables, tythingmen, or head-boroughs, after they shall have made and completed such lists according to the manner directed by the before-mentioned acts, and this present act, to subscribe the same in the presence of one justice for each county; and at the same time, to attest the truth of such lists upon oath to the best of their knowledge or belief; which oath, and the said lists, shall (being signed by the justice before whom the same shall be attested) be delivered by the said constables, &c. to the high constables, who are to deliver in such lists to the quarter sessions, attesting upon oath the receipt of such lists from the constables, &c. and that no alteration hath been made since their receipt thereof. *s. 7.*

That every sheriff, or other officer, to whom the return of the *venire facias juratores*, or other process for the trial of causes before justices of assize, or *nisi prius*, in any county in England, shall, upon his return of every such writ of *venire facias*, (unless in causes intended to be tried at bar, or in cases where a special jury shall be struck by order or rule of court,) annex a panel to the said writ,

and give certificate.

No money to be taken to excuse persons from serving.

Penalty.

Constables, &c. to subscribe their lists before justices, an oath, &c.

Sheriff, &c. on return of writs of *venire facias* to annex a panel of jurors, &c.

containing the christian and surnames, additions, and places abode, of a competent number of jurors, named in such lists, as qualified to serve on juries, the names of the same persons to be inserted in the panel annexed to every *venire facias*, for the trial of all issues at the same assizes in each respective county; which number of jurors shall be not less than forty-eight in any county, nor more than seventy-two, without direction of the judges appointed to go the circuit, and sit as judges of assize, or *nisi prius*, in such county, or one of them, who are respectively hereby impowered and required, if he or they see cause, by order under his or their respective hand or hands, to direct a greater or lesser number, and then such number as shall be so directed, shall be the number to serve on such jury; and that the writs of *habeas corpora juratorum*, or *distingas*, subsequent to such writ of *venire facias juratores*, need not have inserted in the bodies of such respective writs, the names of all the persons contained in such panel; but it shall be sufficient to insert in the mandatory part of such writs respectively, *corpora separalium personarum in panello huic brevi annexo nominatarum*, or words of the like import, and to annex in such writs respectively panels, containing the same names as were returned in the panel to such *venire facias*, with their additions and places of abode, that the parties concerned in any such trial, may have timely notice of the jurors who are to serve at the next assizes, in order to make their challenges to them, if there be cause; and that for the making the returns and panels aforesaid, and annexing the same to the respective writs, no other fee or fees shall be taken than what are now allowed. *s. 8.*

Return of jurors
in Wales,

That every sheriff, or officer, to whom the return of juries in the court of grand sessions in any county of *Wales* shall belong, shall, at least eight days before every grand sessions, summon a competent number of persons qualified, out of every hundred and commote within such county,

sq

so as such number be not less than ten, or more than fifteen, without the directions of the judge, by rule of court, and the officer shall return a list containing the christian and surnames, additions, and places of abode, of the persons so summoned, the first court of the second day of every grand sessions; and the persons so summoned, or a competent number of them, as the judge shall direct, and no other, shall be named in every panel to every writ of *venire facias juratores*, *habeas corpora juratorum*, and *distingas*, for the trial of causes in such grand sessions. *f. 9.*

That every sheriff, or other officer, to whom the return of the *venire facias juratores*, or other process before the justices of the courts or sessions to be held for the counties palatine of *Chester*, *Lancaster*, or *Durham*, doth belong, shall, fourteen days at least before the sessions, summon a competent number of persons qualified, so as such number be not less than forty-eight, nor more than seventy-two, without the direction of the judge; and shall, eight days at least before such session held, make a list of persons so summoned; and the list so made shall be hung up in the sheriff's office, and the persons named, and no other, shall be summoned at the next sessions; and the sheriff is to return such list on the first day of the sessions; and the persons so summoned, or a competent number of them, as the judge shall direct, and no other, shall be named in every panel, to be annexed to every writ of *venire facias juratores*, *habeas corpora juratorum*, and *distingas*, in such sessions. *f. 10.*

and counties palatine of *Chester*, *Lancaster*, and *Durham*.

That the name of each person, summoned and impanelled, with his addition, and the place of his abode, shall be written in distinct pieces of parchment, or paper, being all of equal size, and shall be delivered unto the marshal of such judge by the under-sheriff, and shall, by the direction of the marshal, be rolled up all in the same manner, and put into a box or glass; and when a cause is brought

Names of persons impanelled to be written, and delivered to the marshal in a box to be drawn, &c.

to be tried, some indifferent person shall, in the open court, draw out 12 of the papers; and if any of the persons drawn shall not appear, or be challenged, and set aside, then a further number till 12 be drawn, who shall appear; and the said 12 persons so first drawn and approved, shall be the jury to try the cause, their names being marked in the panel, and being sworn, and the names of the persons sworn, shall be kept apart in some other box, &c. till the jury have given their verdict, and same recorded, or till the jury be discharged, and then the same names shall be rolled up again and returned to their former box, &c. and so *toties quoties*.

If any cause shall be brought on to be tried, before the jury in any other cause shall have brought in their verdict, or be discharged, the court may order 12 of the residue to be drawn as before for trial. *f. 12.*

Penalty on defaulters.

That every person or persons, whose name or names shall be drawn as a juror, and who shall not appear after being openly called three times, upon oath made that such person had been summoned, shall forfeit for every default in not appearing upon call, (unless some reasonable cause of absence be proved by oath, to the satisfaction of the judge,) such fine not exceeding five pounds, and not less than forty shillings, as the said judge shall think reasonable. *f. 13.*

Method in case of view.

Provided always, that where a view shall be allowed, that six of the jurors named in such panel, or more, who shall be mutually consented to by the parties on both sides, or if they cannot agree, shall be named by the proper officer of the respective courts of king's bench, common pleas, exchequer, at *Westminster*, or the grand session in *Wales*, and the said counties palatine, or if need be, by a judge of the respective courts where the cause is depending, or by the judge, before whom the cause shall be brought on to trial respectively, shall have the view, and shall be first sworn, or such of them as appear upon the jury to try the said

said cause, before any drawing, as aforesaid, and so many only shall be drawn to be added to the viewers who appear, as shall, after all defaulters and challenges allowed, make up the number of twelve to be sworn for the trial of such cause.

f. 14.

Provided always, that where any special jury shall be ordered to be struck in any cause arising in any city, &c. the sheriff shall be ordered by such rule to bring the books of persons qualified to serve on juries, out of which juries ought to be returned by such sheriff in like manner as the freeholders book hath been usually ordered to be brought, in order to the striking of juries for trials at the bar, in causes arising in counties at large; and in every such case the jury shall be taken and struck out of such books or lists. *f. 17.*

When special juries in cities are appointed, the jury to be taken out of lists of persons qualified.

That any person or persons, having an estate in possession in land, in their own right, of the yearly value of 20 *l.* or upwards, over and above the reserved rent payable thereout, such lands being held by lease or leases for the absolute term of 500 years or more, or for 99 years, or any other term, determinable on one or more life or lives, the names of every such person shall be inserted in the lists, in order to their being inserted in the freeholders' book; and the persons appointed are to insert them, and such leaseholders shall be summoned to serve on juries, in like manner as freeholders. *f. 18.*

Who are qualified to be inserted in the lists.

That the sheriffs of *London* shall not return any person to try any issue joined in king's bench, common pleas, and exchequer, or to serve on any jury at the sessions of *oyer and terminer*, gaol-delivery, or sessions of the peace, to held for *London*, who shall not be an householder, and have lands, tenements, or personal estate, to the value of 100 *l.*; and the same matter alleged by way of challenge, and so found, shall be taken and admitted as a principal challenge; and the persons so challenged, shall be examined on oath of the truth of the said matter. *f. 19.*

Or to serve in *London*.

That

Return of juries
in capital cases.

That the sheriffs, for any county, city, &c. shall not return any person to serve on any jury for the trial of any capital offence, who would not be qualified in such respective county, city, or place, to serve as jurors in civil causes for that purpose; and the same matter and cause alleged by way of challenge, and so found, shall be admitted and taken as a principal challenge, and the person so challenged shall be examined on oath of the truth. *f. 20.*

This act is made perpetual by 6 *Geo. 2. c. 37.*

None to be re-
turned, who has
been returned in
the two terms
preceding.

By stat. 4 *Geo. 2. c. 7. f. 2.* it is enacted, That no person shall be returned to serve as a juror at *nisi prius*, in *Middlesex*, who has been returned to serve as a juror at any such session of *nisi prius* in the two terms or vacations next immediately preceding, under such penalty upon the sheriff, &c. as might have been inflicted upon them for any offence against the clause therein recited. *f. 2.*

Leaseholders,
where the im-
proved rents a-
mount to 50 l.
per annum, lia-
ble to serve on
jurier.

That all leaseholders on leases, where the improved rents shall amount to 50 l. or upwards, *per annum*, over and above all ground-rents, or other reservations, payable by virtue of the said leases, shall be liable and obliged to serve upon juries, when they shall be legally summoned for that purpose.

In what manner
justices of session
or assize for
Chester, Lancas-
ter, and Durham,
may appoint spe-
cial juries.

By stat. 6 *Geo. 2. c. 18. f. 1.* it is enacted, That the justices of the counties palatine of *Chester*, *Lancaster*, and *Durham*, on motion made on behalf of his majesty, or on motion of any prosecutor or defendant in any indictment or information for any misdemeanor, or on motion of any plaintiff or defendant, in any action depending, or to be brought and carried on in the courts of session or assize of the said counties, shall, in case such justices shall think fit, order a jury to be struck before the proper officer, for the trial of any issue joined in such manner as special juries have been usually struck in the courts of law at *Westminster*, upon trials at bar had in the said courts, which jury, so struck, shall be the jury returned for the trial of such issue.

Penalty

Penalty of 40*s.* on every juryman who does not appear after summoned in *London* or any other city or town corporate, liberties or franchises in *England*, for each default, nor not less than 20*s.* 29 *Geo* 2. *c.* 19. *f.* 1.

Penalty of jurors who do not appear.

By stat. 24 *Geo*. 2. *c.* 7. it is enacted, That no person who shall serve upon any jury appointed or returned, shall be allowed for serving more than the sum of money which the judge shall think reasonable, not exceeding 1*l.* 1*s.* except in causes wherein a view hath been directed. *f.* 2.

Fees allowed to juryman.

That every *venire facias*, in any action or information on any penal statute, in any of his majesty's courts of record at *Westminster*, in the counties palatine of *Lancaster*, *Chester*, and *Durham*, and the principality of *Wales*, shall be awarded of the body of the proper county where such issue is triable. *f.* 3.

Venire facias for the trial of any issue upon a penal statute, to be awarded of the body of the county where the issue is triable.

That no challenge shall be taken to any panel of jurors, for want of a knight's being returned in such panel, nor any array quashed by reason of any such challenge taken after that time.

No challenge to be taken to any panel of jurors, for want of a knight's being returned thereon, &c.

Sessions.

THE sessions of the peace is a court of record, holden before two or more justices, whereof one is of the quorum, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament. *Dalt.* 5.

Sessions, what.

It seems that the *general sessions* and *quarter-sessions* are not synonymous; but that the *quarter-sessions* are a species only of the *general sessions*, and that such sessions only are properly called *general quarter-sessions* which are holden in the *four quarters* of the year, in pursuance of the statute of the 2 *H.* 5.; and that any other sessions, holden at any other time for the general execution of the justices' authority, which by the said statute they are authorised

Difference between general, quarter, and special sessions.

authorised to hold oftner than at the times therein specified, if need be, may be properly called *general sessions*, and that those holden on a special occasion for the execution of some particular branch of their authority, may properly be called *special sessions*. 2 *Haw.* 42.

At what time the sessions shall be kept.

By the 12 *R.* 2. c. 10. the justices shall keep their sessions in every *quarter* of the year at least, and by *three days*, if need be; on pain of being punished according to the discretion of the king's council, at the suit of every man that will complain.

When quarter-sessions to be held.

And by the 2 *H.* 5. st. 1. c. 4. the particular time in every quarter of the year shall be as follows; to wit, in the *first week* after the feast of St. Michael, in the *first week* after the *Epiphany*, in the *first week* after the close of *Easter*, and the *first week* after the translation of St. Thomas the Martyr; and more often if need be.

Except in Middlesex.

Justices of the peace for the county of *Middlesex* shall not be obliged to hold their sessions above *twice* in the year, notwithstanding the statute of 12 *R.* 2. yet they may keep them oftner, if need be, at their discretion.

Exposition of 2 *H.* 5.

The strict regular exposition of the statute of the 2 *H.* 5. is, that if the *feast-day* fall of the *Sunday*, the sessions shall be held *the week following*, and not the *same week*. 2 *H. H.* 49.

Quarterly sessions are variously held in several counties.

Yet it is very plain, that the quarter-sessions are variously held in several counties, some at one day and some at another; yet it hath been ruled, that these are each of them good *quarter-sessions* within the several acts; for these acts, especially the 2 *H.* 5. is only *directory* and in the *affirmative*, and therefore, though the sessions are held on another day, according to the general direction of the 12 *R.* 2. yet they are *quarter-sessions*. 2 *H. H.* 50.

Precept to summon the session; from the justices to the sheriff.

Westmoreland, J. P. and K. P. Esquires, justices of our sovereign lord the king, assigned to keep the peace in the county of *Westmoreland, and also to hear and determine divers felonies, trespasses, and other misdemeanors*

meanors committed in the said county, and one of us of the quorum; to the sheriff of the same county, greeting: On the behalf of our said sovereign lord the king, we command you, that you omit not, by reason of any liberty in your county, but that you enter therein, and that you cause to come before us, or others, justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on the day of now next ensuing, at the hour of ten in the forenoon of the same day at in the said county 24 good and lawful men of the body of the county aforesaid, then and there to inquire, present, do, and perform all and singular such things, which on the behalf of our said sovereign lord the king shall be enjoined them: also that you make known to all coroners, keepers of gaols, and houses of correction, high constables, and bailiffs of liberties, within the county aforesaid, that they be then there to do and fulfil those things which by reason of their offices shall be to be done: moreover, that you cause to be proclaimed through the said county, in proper places, the aforesaid sessions of the peace to be held at the day and place aforesaid; and do you be then there, to do and execute those things which belong to your office: and have you then there as well the names of the jurors, coroners, keepers of gaols, and houses of correction, high constables, and bailiffs aforesaid, as also this precept. Given under our seals at A. in the county aforesaid, the day of in the year of the reign of, &c.

(Lamb. 381.)

The execution of this precept appears in certain panels hereunto annexed. I further certify that I have given notice to all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties within my county, to be and appear at the time and place within mentioned, to do and perform, &c. and have caused to be proclaimed thro' my county, in proper places, the sessions within mentioned. The answer of

Then

Then on a piece of parchment write the names of the jurors to inquire for our lord the king, &c. thus :

The names of the *jurors to inquire.*

The names of the *jurors to try.*

Coroners, keepers of gaols, &c.

Sheriff to provide a decent place to hold the session.

And convey such offenders to the gaol.

Ought also to attend ; and for why.

The sheriff is to provide and make ready a fit and decent place for the justices of the peace to hold their general quarter-sessions. And the sheriff is to convey such offenders to the gaol, at the appointment of the justices of the peace. He or his under-sheriff ought also to attend the justices at their general sessions of the peace to return the precept, and to take charge of prisoners, and to serve the court otherwise, as he hath in charge by the *mandamus* that is mentioned in the commission of the peace ; the other, because the sheriff hath also care and charge of the peace, and so is there to object against such persons as shall be committed by him. *Dalt. 372.*

Upon receipt of precept to summon quarter-sessions, how to act.

The sheriff, upon receipt of the precept of any two justices, (one to be of the *quorum*,) is to summon the session of the peace, and to return a grand jury of 24 men before them or their fellow justices, at a certain day and place appointed ; but such precept ought to bear *teste fifteen days* before the return, and ought to be forthwith delivered to the sheriff, that he may have sufficient time to proclaim the sessions, and to give notice to all *stewards, constables, and bailiffs of hundreds and liberties, coroners, and other officers*, to be present and to do their duties at such day and place, and to proclaim in proper places, throughout his bailiwick, that such sessions will be holden at such day and place, and to attend there himself to do his duty. *2 Haw. 41.*

To grant precepts for summoning sessions.

When the sheriff hath received the precept from the clerk of the peace, he must direct several warrants to the several bailiffs of hundreds, rapes, and liberties, containing in them the substance of the said precept, to summon them to appear at the sessions, &c.

And

And if the Sheriff shall make default of attendance at the sessions, the justices may fine or amerce him. If default be made.

All *bailiffs*, and other ministers, of *liberties* ought also to attend, and must execute their process. *Bailiffs, &c. to attend.*
27 H. 8. c. 15.

The justices out of sessions as well as from their sessions may in many cases direct their precepts or warrants, and other process to the sheriff, &c. and he shall execute the same. *Dalt.* 373.

Oxon, } J. P. Esq; Sheriff of the county aforesaid,
to wit. } to A. B. and C. D. my bailiffs of the hundred of G. greeting: By virtue of his majesty's writ to me directed; these are in his majesty's name to will and require you, that you forthwith make known, by open proclamation, in every market town, and all other places convenient, within your said hundred, that the next general and quarter sessions of the peace, of and for the county aforesaid, is to be holden and kept at Oxford in the county aforesaid, on *Wednesday*, being the day of next coming, by eight o'clock in the forenoon of the same day; and that you give notice to all justices of the peace, coroners, stewards, gaolers and chief constables of your hundred, that they be then and there present, to do and perform that which to their several offices doth appertain: and that all those that ought to prosecute any prisoner or prisoners, in the gaol of the said county, or bound over then to appear and answer, be then and there present, to prosecute against them according to law: and also, that you summon and warn the persons whose names are underwritten, that they be then and there present to serve on the grand jury, and to enquire, on his majesty's behalf, for the body of the county aforesaid, of all such matters and things as shall be then and there given them in charge: and also, that you summon and warn the persons underwritten, being able and sufficient freeholders of your hundred, that they be then and there present to serve on the petty jury, for his majesty's

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If default be made.

Bailiffs, Ac. to attend.

Justices may direct their precepts and warrants to the S.

Warrant to
London.

majesty's service; and that you yourself be then and there present to make return hereof. And herein neither you nor them may fail, and at your and their perils. Given under the seal of my office, the day of and in the 39th year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, and in the year of our Lord 1799.

Grand jury.

A. B.

C. D.

(name them)

Petty jury.

E. F.

G. H.

If there are persons to be called on recognizances then how to add to the process,

If there are any persons to be called on their recognizances, &c. then if the precept commands the sheriff to summon or distrain, &c. add this, "I also command you to summon *C. D.* of, &c. "and to distrain the inhabitants of the hundred of " *C.* so that they be and appear before the justices "aforesaid, at the time and place aforesaid, and "also that you take *E. F.* of, &c. *J. K.* of, &c. "so that I may have their bodies before the said "justices at the time and place aforesaid, to answer to our said lord the king, of and concerning divers trespasses and other misdemeanors "whereof they stand indicted. Hereof fail not, "as you will answer at your peril. Given under "my hand and seal of office," &c.

By the same sheriff.

Circuit.

Courts of assize, and nisi prius, to be composed of two or more commissioners.

When came into use.

THE courts of assize, and *nisi prius*, are composed of two or more commissioners, who are twice in every year sent by the king's special commission, all round the kingdom, (except *London* and *Middlesex*.) to try by a jury of the respective counties, the truth of such matters of fact as are then under dispute in the courts of *Westminster-hall*. They came into use in the room of the ancient justices in eyre, who made their circuit

circuit once in seven years, for the purpose of trying causes. *Co. Litt.* 293. *See Mag. Cart.* 12.

The present justices of assize, and *nisi prius*, are derived from the statute of *Westm.* 2. 13 *Ed.* 1. c. 30. 14 *Ed.* 3. c. 16. and must be two of the king's justices, of the one bench or the other; or the chief baron of the exchequer, or the king's serjeants sworn; and usually make their circuits after *Hilary* and *Trinity* terms. 3 *Ed.* 1. c. 51. The present justices.

No man shall be judge of assize in his own country. 4 *Ed.* 3. c. 2. 8 *Ric.* 2. c. 2. 33 *Hen.* 8. c. 24.

The judges sit by virtue of five several authorities. 1. *The commission of the peace.* 2. *A commission of oyer and terminer.* 3. *A commission of general gaol delivery.* 4. *A commission of assize*, directed to the judges and clerk of assize, to take the assizes; that is, to take the verdict of a peculiar species of jury called an assize; and summoned for the trial of landed disputes. 5. That of *nisi prius*, which is a consequence of the commission of assize being annexed to the office of those justices by the *stat. of Westm.* 2. 13 *Ed.* 1. c. 30. and it empowers them to try all questions of fact issuing out of the courts at *Westminster*, that are then ripe for trial by jury. The original of the name is this; all causes commenced in the courts of *Westminster-hall* are by the course of the courts appointed to be there tried, on a day fixed in some *Easter* or *Michaelmas* term, by a jury returned from the county wherein the cause of action arises; but with this proviso, *nisi prius iudiciarii ad assisas capiendas venerint*; unless before the day prefixed, the judges of assize come into the county in question. This they are sure to do in the vacations preceding *Easter* and *Michaelmas* terms, and there dispose of the cause, which saves much expence and trouble, both to the parties, the jury, and the witnesses.

The several counties in *England* are divided into six circuits, viz.

CIRCUIT.

<i>The Midland, containing the counties of</i>	
<i>Northampton,</i>	<i>Derby,</i>
<i>Rutland,</i>	<i>Leicester,</i>
<i>Lincoln,</i>	<i>Warwick.</i>
<i>Nottingham,</i>	
	<i>Norfolk.</i>
<i>Bucks,</i>	<i>Cambridge,</i>
<i>Bedford,</i>	<i>Norfolk,</i>
<i>Huntingdon,</i>	<i>Suffolk.</i>
	<i>Home.</i>
<i>Hertford,</i>	<i>Suffex,</i>
<i>Essex,</i>	
<i>Kent,</i>	<i>Surry.</i>
	<i>Oxford.</i>
<i>Berks,</i>	<i>Gloucester,</i>
<i>Oxford,</i>	<i>Monmouth,</i>
<i>Hereford,</i>	<i>Stafford,</i>
<i>Salop,</i>	<i>Worcester.</i>
	<i>Western.</i>
<i>Southampton,</i>	<i>Cornwall,</i>
<i>Wilts,</i>	<i>Devon,</i>
<i>Dorset,</i>	<i>Somerset.</i>
	<i>Northern.</i>
<i>York,</i>	<i>Cumberland,</i>
<i>Durham,</i>	<i>Westmoreland</i>
<i>Northumberland,</i>	<i>Lancashire.</i>

Sheriff's Duty on the Circuit.

BEFORE the justices of assize go their circuit, they issue out their precepts directed to the sheriff, to cause the assizes to be summoned, and the persons who are obliged to attend thereon, to appear before them, in consequence of which, he issues out his warrant directed to his bailiffs, and also to the bailiffs of liberties, within his county, to summon the same, and the persons therein named; and to proclaim within every hundred, the day and place the assizes are to be held; which warrant is to contain the substance of the judges precept, and the sheriff must cause this to be done
fix

six days at the least before the assize day. *Stat.* 42 *Ed.* 3. c. 11. 6 *H.* 6. c. 2.

He is also to cause twenty-four good and lawful men of the county, some out of every hundred, and which are called the grand inquest, who are gentlemen of the first figure in the county, and freeholders, but to what amount is uncertain; to attend there to do and execute all those things, which on the part of our lord the king shall be commanded them.

Also twenty-four good and lawful men who have lands and tenements in freehold, to the value of 10*l.* *per annum*, who are called the petit jury, and are to try prisoners upon the indictments found by the grand inquest. *Stat.* 5 *Geo.* 2. c. 25.

To give notice to all justices of peace, coroners, mayors, stewards, bailiffs of hundreds and liberties or franchises, to be there with their rolls, records, &c. To prosecutors to come and prosecute any prisoner in prison, and also to all gaolers, to convey unto the said assize town, all prisoners committed to their charge or custody, there to receive their trials, judgment, and punishments for the same; and for them to certify the names of all the prisoners which are in their custody for felony, &c. and by whom committed, and for what cause, what prisoners have been bailed (by the justices of the peace) after they were committed: And also to certify the several rapes and hundreds within the county, with the names of their constables, and that they severally attend in person upon the justices of assize and gaol delivery; and execute their commands in matters concerning the execution of their offices.

And that the said bailiffs summon a jury between party and party, for the trial of their cause at *nisi prius*.

After the bailiffs have executed their warrants, they are to return the same to the sheriff, in order for him to return the judge's precept, to which he annexes a calendar as follows, wrote on a piece of parchment.

Names of the
justices, &c.

Oxfordshire, } A calendar of the names of all the
to wit. } justices of peace of our lord the king,
coroners, mayors, bailiffs of liberties, rapes, and
hundreds, within the county of *Oxford*, summoned
to be and appear before his majesty's justices as-
signed to take the assizes in and for the said county,
on *Wednesday* the — day of *July*, at *Oxford*, in
the said county, and in the year of our Lord 1799.

Names of the justices of peace :

Sir *A. B.* Baronet.—*E. F.* Esq; &c.

Names of the coroners :

C. H.—*I. K.*—*L. M.*—*O. P.*

*Names of the stewards or bailiffs of every liberty or
franchise :*

A. B. stewards of the liberty of *E.*—*C. D.* bailiff of
the liberty of *F.*

Et sic de cæteris.

Names of the bailiffs of the hundred of O :

R. S. bailiff of the hundred of *R.*—*T. V.* bailiff of
the hundred of *C.*—and name the other bailiffs.

Then on a separate piece of paper, put the
names of the grand jury until they be sworn, and
when they are sworn, ingross them on parchment,
and deliver the same to the clerk of the assize to be
annexed to the precept thus :

Grand jury.

Oxfordshire, } The names of the grand jury to en-
to wit. } quire for our sovereign lord the king,
and the body of the said county (here insert their
names underneath, and the hundred they live in),

Also on a separate piece of parchment, ingross
the names of the jury, who are to try between the
king and the prisoners, and at the foot thereof, add
the several bailiffs' names, who gave them notice.

Common jury.

Oxfordshire, } The names of the jury to try between
to wit. } our sovereign lord the king and the
prisoners (here insert the names, and at the end
of each, put the sheriff's name).

The sheriff generally sends three or four days
before the circuit begins, to the judges of assize,
the calendar of the prisoners, by what justice com-
mitted,

mitted, and for what cause, what prisoners are bailed, and by whom, wrote on plain paper, and delivered in town, the form of which is as follows:

Oxfordshire, } The calendar of all the prisoners be- Calendar of prisoners.
to wit. } ing in the gaol of the said county,
together with their attachments, indictments, and
all other muniments, any way concerning the said
prisoners.

He is also to annex to the affize process, a copy of the said calendar of the prisoners and their commitments, &c. on parchment as delivered to the judges. And by what justice of peace the prisoner was committed, and for what cause; what prisoners have been bailed, by the justices of peace after they were committed, and by what justice they were so bailed.

He is to give the judge's marshal, on the day of trial, a panel of the jurors, summoned between party and party, ingrossed on parchment.

Oxfordshire, } The names of the jury, between, Panel of jurors of nisi prius.
to wit. } &c. (insert the bailiffs that summoned them); to which is added, issues upon each of them, 40 s. also to make tickets of those names and hundreds, with the jury's addition of trade, being an exact copy of the panel upon strong paper, to put in the jury box, &c.

Oxfordshire, } J. B. Esq; sheriff of the county afore- Warrant to summon the assize.
to wit. } said; to the bailiff of the hundred of

greeting: By virtue of the precept of *Edward Willes* esq; and *Francis Buller* esq; justices of our said lord the king, assigned to take all assizes, jurats, and certificates, &c. I command you, that you do not omit, by reason of any liberty within my bailiwick, but that you cause to come before the said justices at *Oxford*, in the county aforesaid, on the day of next coming, all writs of affize, jurats, and certificates, before whatsoever justices to be taken, &c. and also, that you cause to come before his majesty's said justices, at the time and place aforesaid, such,

and so many honest and lawful men of the hundred aforesaid, whose names are hereunder written, to do those things which, on the part of our said lord the king, shall be then and there enjoined them. I command you also, that you make public proclamation, in, and through the whole hundred aforesaid, that all those who will prosecute against any prisoner, in any prison or gaol in the county aforesaid, that they be then and there present to prosecute against them, as shall be just. And also, that you give notice to all justices of the peace, chief constables, coroners, stewards, and bailiffs of liberties, within the hundred aforesaid, that they be then and there with their rolls, records, indictments, and other memorandums, to do those things which in this behalf shall belong unto them to be done. And further, by virtue of the several writs of our said lord the king, to me directed, I command you, that you have before the said justices of our said lord the king, at the time and place aforesaid, the bodies of the several jurors whose names are hereunder written, to serve upon the several juries hereunder mentioned, and that yourself be there in your own person, to attend, do, and perform all those things which belong to your office: And that you have then and there the names of the said justices, chief constables, coroners, stewards, bailiffs of liberties, jurors, &c. Given, &c. and in the thirty ninth year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France and Ireland*, king, defender of the faith, and so forth, and in the year of our Lord 1799.

Grand jury. Jury between party. Crown jury;
and party.

N. B. The names are only to be inserted, which each bailiff is to summon.

Precept for the
assize process.

Oxon. } *J. B. Esq;* sheriff of the county afore-
to wit. } said, to *John Doe*, my bailiff, for this
purpose only, greeting: By virtue of his majesty's
writ to me directed, these are to charge and com-
mand

mand you, that notwithstanding any liberty in my county, you enter the same, and summon, distrain, and take the several persons hereunder named, so that they be and appear before the justices assigned to take the assizes, to be holden for my county at *Oxford*, on *Monday*, the — day of *July* next, to answer to his majesty for several trespasses, contempts, and offences for which they stand indicted: And hereof fail not, at your peril. Given under the seal of my office, this day of in the year of our Lord 1799.
[Here insert the names as before.]

Oxon, } *J. B. Esq;* sheriff of the county afore-
to wit. } said, to *W. R.* my bailiff, greeting: Precept to sum-
mon a special
jury.
These are to will and require you, immediately upon sight hereof, that you warn the several persons hereunder named, so that they be and appear before his majesty's justices of assize at on the day of and then and there to serve as jurymen in a cause between plaintiff, and defendant. Hereof fail not, at your peril. Given under the seal of my office, this day of 1799.
By the same sheriff.

The names of the jurors,

Sir E. H. baronet, and all the other names.

Where there is to be a view, add the following. And I do also hereby authorise and require you, to summon the first twelve persons named herein, so that they do appear to take a view of the place in question, on the day of instant, and that they meet in order thereto, at one of the clock in the afternoon of the same day, at the house called or known by the name or sign of the in my county.
By the same sheriff.

The bailiffs' summonses are printed.

Having now summoned the assizes, please to make the following returns to the several precepts.

The execution of this writ appears in divers panels hereunto annexed; and further, I have made public
Return to the
precept of gaul
delivery, signed
by the clerk of
assize.

public proclamation through my whole bailiwick, that all they who will prosecute against them, or any of them, for any thing within contained on the part of our lord the king, or for themselves, that they be then and there with their bills in form of law to prosecute. I have given notice also to all justices of the peace, mayors, coroners, bailiffs of liberties and hundreds, and constables of hundreds, in the county aforesaid, that they respectively be then and there with their rolls, records, indictments, and all other remembrances, to do those things which to their several offices in that behalf appertain, to be done as is within commanded. The answer of, &c.

The return to the precept of oyer and terminer signed by the judges.

Ditto of the gaol delivery signed by the judges. Return of summons on an indictment at the assizes.

Return of nihil.

The execution of this writ appears in divers panels hereunto annexed. The answer of, &c.

The within-named *A. B.* and *C. D.* are summoned by good summoners, to wit, *E. F.* and *G. H.* (the bailiffs' names.

Pledges, { *John Doe,*
and
Richard Roe.

But the within-named *J. K.* and *L. M.* have nothing, nor hath either of them any thing in my bailiwick, by which they or either of them can be attached, nor are they or either of them found in the same.

Return of capias on indictment at assize.

By virtue of this writ to me directed, I have taken the bodies of the within-named *A. B.* and *C. D.* whom I have before the king's justices within-named, at the day and place as within I am commanded, but the within-named *E. F.* and *G. H.* are not, nor is either of them found in my bailiwick. The answer of, &c.

Return of assize precept, signed by the clerk of assize.

The execution of this precept appears in divers panels to the same precept annexed. And further I have made proclamation through my whole bailiwick, that all they who will prosecute against them for any thing within contained, on the part of our lord the king, or for themselves, that they be then and there with their bills in form of law to

to prosecute. I have also given notice to all justices of the peace, mayors, coroners, escheators, and stewards; and also to all chief constables and bailiffs, of every hundred and liberty within my county, that they be then and there in their own persons, with their rolls, records, indictments, and other remembrances, to do those things and to which their offices in that behalf appertain to be done, as within I am commanded. The answer of, &c.

By the common law, the sheriff, could return no issues upon a *ven. fac. jurato*. neither was it needful to return any great issues upon writs of *habeas corpora*: but for the more expedition of justice, and speedy trial of issues, (which in former times were greatly delayed,) for want of compelling jurors to appear, by the *stat. of 35 H. 8. c. 6. s. 4.* it is enacted, "That upon every writ of *habeas corp.* or *distringas*, with a *nisi prius* delivered of record to the sheriff, &c. to whom the making of the return doth appertain, the said sheriff, &c. shall return issues upon every person impanelled, and returned upon any such writs, at the least 5 s. upon an *alias*, 10 s. *pluries*, 13 s. 4 d. and double that sum upon every other."

What issues the sheriff must return upon *habeas corpora*, or *distringas*.

By *stat. 27 El. c. 6.* "The issues upon the first *distringas* are enlarged to 10 s. the second 20 s. and 30 s. on the third."

"No sheriff or other officer shall return in the king's courts, less issues in actions of attainder, than 40 s. upon the first writ of distress, and 5 l. on the second writ of distress, and double upon every other writ of distress, against the persons impanelled and returned to be jurors in the same action, upon pain to forfeit twenty pounds to the king and party grieved." 11 H. 7. c. 21. 23 H. 8. c. 3. & 13 Eliz. c. 25. By 3 Geo. 2. c. 25. s. 13. 5 l. and not less than 40 s. as the judge shall think reasonable.

Upon attainder.

Of the Court of Exchequer.

Of the King's antient Revenues.

THE exchequer was the antient and sovereign court in *Normandy*, to which they appealed from all inferior jurisdictions, it being the grand court of the dukes there.

It was the sovereign jurisdiction and superintendant of all manner of complaints from the *bailiffs* or *sheriffs*; for they exercised the ordinary jurisdiction through the whole dutchy of *Normandy*; their duty was to gather the dukes rents in each bailiwick, and to account for the same in this great court, which was composed of *barons*, *bishops*, and *abbots*.

Bailiff and *sheriff* were antiently the same officer, and the *sheriff* originally had the ordinary jurisdiction within the county or bailiwick, though afterwards, they appointed lieutenants and bailiffs of counties, distinct from the *sheriff*; but certain it is, that the highest justices were those that they called the masters of the exchequer, and who are now *at this day* called the presidents and counsellors of the court of parliament, and to them it appertained to amend what the bailiffs or lesser justices had misdome, and to call in all things that were withheld from the prince.

Towards the latter end of the *Norman* period, the power of the *justices* was broken, so that the *aula regis* which was before one great court, where the *justices* presided, was divided into four distinct courts, the courts of chancery, and the exchequer, the courts of king's bench, and common pleas.

In the antient *sheriff's* account, he was charged *de proficuo com'* if he received them as *bailiff*, or *de firma proficui com'* if he farmed them at a certain rent; these consisted of the profits of the torns, county-courts, fines and amerciaments, &c. but as business came into the king's court, these *proficua comitat'* became very inconsiderable. *Gilb. Exch. 90.*

Next

Next to these in the antient accounts were *firmæ majores et minores*, which the king had turned from provision in kind, to certain rents payable at his exchequer, and with suit and service to be done at his own court; these were wrote in charge on the summons in the pipe, which is a summons in words the same with that in the green wax, only different matters are charged in it; this summons was in order to quicken the tenants to pay in their rents into the exchequer, and take tallies from thence; and if they were paid into the exchequer by the tenants, the sheriff owed them on his account; for if they shewed him their tallies of payment below, the foils of which were likewise entered by the chamberlains in their books, and by the clerk in his, that was a sufficient discharge of that sum, to the sheriff and tenants also; but if the tenants did not pay it into the exchequer, but to the sheriff, and the sheriff *totted* it in his account, the tenant was discharged, and the sheriff was charged with it, because payment to the king's bailiff, who had charge to receive it, was payment to himself; but it was the tenant's business to see that it was *totted* by the sheriff, and to produce (if occasion) the sheriff's receipt to the court to oblige him to *tott* it; if through the tenant's neglect it was *nichi'd*, he was antiently obliged to pay it again, and had his remedy over against the sheriff by commission, which the king antiently issued, as well as by action; so that it was better for the tenant to pay it into the exchequer, according to his original tenure, unless he would confide in the sheriff. *Ibid.* 91, 92. (a)

Of the Farms of the County, and all other Farms.

Of the farms of the county, and all other farms *Firmæ com'.* wrote in the grand roll, which is in nature of the king's rent-roll of his whole estate; in such roll the particular rents which made up the body of the

(a) That the summons of the pipe is the same with that of the green wax. *Madd.* 36.

Madd. 655.

county were set forth; but because they after became very small by change of money, and releases to tenants, therefore they omitted afterwards to charge them in particular, but put them in gross in *corp' comitat'*; and therefore in the great roll in the *exchequer*, which is without date, the farms that compose the *corpus comitat'* were wrote at large till the twelfth of *Edw. 1.* when the clerks procured a patent that they should not be obliged to write out every year each particular of the *corpus comitat'*, but to write them on a separate roll one for all, which was to be read to the sheriff every year on his account.

Liberationes.

The most common of the *liberationes*, or the *liveries*, were the *liberationes* to the comes or earl of the county, which seems to have risen on escheats of such earldoms to the king, so that many of those shrievalties seemed to be composed of the rent paid to the antient earls, with suit to his court in the county; and it seems afterwards to be the policy of the crown, never to give out such earldoms as feudal and palatinate jurisdictions; but the *Norman* policy was to deliver such counties to their bailiffs, and for the maintenance of the splendour of the earls, to give them one third of the profits of the county courts.

Madd. 651.

The sheriff often gave acquittances and tallies to the tenants, and yet *nichil'd* them on the account; and upon complaint of the tenants, the king often issued out writs, whereby inquisitions were taken, and what persons the sheriff had received money from, which was *nichil'd* at the *exchequer*, and such tallies were produced to the persons impanelled; and if the sheriffs were found guilty they were attached. But for the more effectual remedy of this grievance, the stat. *de Attinē.* was made 14 *Edw. 2.* which is, that when sheriffs and other ministers being impleaded in the *exchequer* for receiving the king's debts by tallies or acquittances, and not acquitting the party thereof in that court, are so far gone in plea, that the great distress is returned against

Madd. 670.

Wingate's Stat.
tit. Sher. 547.

against them; and if they come not then in to answer, then shall issue out another distress, returnable at a certain day, by which writ, proclamation shall be made in full county, that the defendant appear at the day, and acquit the debt for which he made such tally or acquittance; at which day if he comes not, and the writ be returned, and the proclamation certified, he shall be held as convict, and the debt shall be taken of him as a debt, recovered in the king's court, and damages shall be also awarded to the plaintiff at the discretion of the barons. Howbeit, none shall be hindered by this statute to complain of sheriffs and other ministers, when they shall be found in the *exchequer*, to make them answer there as hath been formerly used.

VEN. 23.
Considerations
for regulating
the exchequer.

From the roll of the preceding year, and the *nova oblata* of estreats, the comptroller of the pipe (having a duplicate of the said roll) made out the pipe-roll.

The clerk of the pipe anciently made the annual roll, in which summons the sheriff was apposed Clerk of the
Pipe. antiently in open court, and now by the curfitor baron, and he is said to be apposed, because the court is to judge what he ought to *apponere*; and before the court, the clerk of the pipe takes down what is *nichil'd* by the sheriff, and so does the comptroller of the pipe, and the sums the sheriff charges himself with, and the comptroller of the pipe makes out a second summons, which is in nature of a *levari*, against the body, goods, and lands, of the debtor; but of this more hereafter.

About the time of *Edw. 1.* there were several tenants and debtors that broke in the king's debt, and indebted also to others of the king's predecessors, and with these the annual roll was stuffed, which made it necessary to the second remembrancer to write them out in charge in the prerogative writ, which created an unnecessary trouble and expence. Henceforward, the desperate debts were to be taken out of the annual roll, and it was
not

not necessary for the clerk to write them out to the sheriff, but to put them into an ex-annual roll, which was one roll of desperate debts, which was never transcribed as the annual roll was: this ex-annual roll was read over to the sheriff on his apposal, and chiefly at *Easter*, when the process issued out; and if he thought any of the desperate debts to be *sperate*; they were transmitted to the annual roll of that year, and so writ out in process to him, and continued in charge till they were got in, or again transmitted to the ex-annual roll.

Reventio casualis.

Atterminated debts.

Next to the *firmæ majores & minores*, was the casual revenue, consisting of debts of the king; and the first in order on the roll were the *debita atterminata*; these were the debts to which the king by his writ had assigned terms or times of payment, and were the same with his other farmers, which were at the *utis* of *Easter* and *Michaelmas*; and these being paid in the manner of rents, were set next in order to the farms.

Mag. Char. c. 14.

These payments of atterminated debts were on large fines set, and amerciaments assessed *secundum qualitatem delicti & quantitatem contementi*, the statute of *Magna Charta* having provided *quod liber homo non amercietur pro parvo delicto, nisi secundum magnitudinem delicti, salvo sibi contemento suo*; and the reason of the statute was that they would not have the feud forfeited for lesser trespasses, as it was in treason and felony; and it would have amounted to a forfeiture of the feud, if amerciaments and fines were so large that they could not be paid out of the person's estate, without process for the sale of the same; and therefore when they estreated fines and amerciaments, which antiently were very large, writs issued to the court of *exchequer* to atterminate such debts, and to issue an inquisition, to inquire *quantum inde regi dare valeat per annum*, *salva sustentatione sua & uxoris & liberorum suorum*; and accordingly such debts were reduced into annual payments, according to the annual value of the freehold, that the king's debtor was seized of; this was called an *estallment*, which is an assizing

Estallments.

affixing or establishing the times of payments of such debtors.

Thence common persons were used to give time of payment to their debtors; and thence arose the *Madd. 672, 679.*
solvend' in common bonds, and the notion of *debit'* in *presenti solvend' in futuro*, by this means drawn over to our use from the civil law.

When the debts were thus atterminated, if they were not paid at the time, the whole was levied, because that when the debts were atterminated, it was according to the contenment of the party; and if he did not pay it according to the attermination, he plainly endeavoured to avoid the justice of the law; and therefore the whole was immediately to be levied as upon an insolvent tenant.

Next to the atterminated debts were the great debts and known debts; and among these were the respited debts, which being generally the oldest, came the next on the roll; these were anciently respited by the king's writ, which gave authority to the court to delay their payment, and so sometimes respited by the proper authority of the court; for as the court might atterminate by the statute of *Magna Charta*, so also they might *respite*, which is no more than giving time of payment; and this they often did, when they were doubtful whether such debts ought to be paid or not, as where payment had been made to the sheriff below, which the sheriff had not *totted*, or on shewing other good cause, they respited such debts till the king's pleasure was known. *Gilb. Ex. 100.*

Next to these were *nova oblata*, being the debts estreated since the making up the last year's roll; *Nova oblata. Madd. 655.*
these debts bound the lands and tenements of the debtor from the time they were of record, viz. the fines and amerciaments from the time they were imposed in a court of record, so that any person, going to the *rotulus magnus*, might know how far each person was indebted to the king, unless in estreats for one year past, for which they were to search the records of the other courts; and the recognizances

cognizances taken for the king in his other courts were wont to be estreated into the *exchequer*, in order, when forfeited, that process might issue on them. *Ibid.*

Dallison 11.
Recognizances.

No recognizances were taken to the king by the ancient conservators of the peace, nor by the sheriffs, nor constables; but in cases where the defendants were bailable, the sheriff or constable took an obligation in his own name, but not any recognizance to the king; but the sheriff himself bailed to appear at his own torn, and the constable to appear at the view of frank-pledge: by the stat. 18 *Ed. 3. c. 2.* 24 *Ed. 3. c. 61.* justices of the peace were established to be appointed by the commission of the king; and these were found so useful, that in a short time the name and office of the conservators of the peace vanished; and those by the 3 *H. 7. c. 3.* bailed by *recognizance* taken to the king, to appear at the quarter sessions; and since 1 *Edw. 4. c. 44.* all indictments and presentments, at leets and torns, are to be certified to the quarter-sessions.

Those obligations taken by the constables are not now in use, and the justices now take bail, by recognizance to the king. *Ibid.* 103.

Bro. Prerog. 71.

These recognizances being only personal securities, it became a doubt, when they began to bind the lands of the subject.

These recognizances are transmitted, whether forfeited or not; all recognizances for appearances ought to be transmitted as forfeited, because it belongs to the court (below) to know whether they appeared or not; for a recognizance being a debt to the king under a condition, does not become an absolute debt till it is forfeited: and therefore when it lies in any other court, it ought not to be estreated, till it appears, by the acts of that court, whether it is forfeited or not; therefore if a recognizance be given for an appearance at the sessions or assizes, and the party upon being called does not appear, that recognizance ought to be estreated, because it appears by the acts of the court, that the condition is broken.

But.

But if a man be bound to appear at the sessions, and in the mean time to keep the peace, or be of good behaviour, and he break the peace in the mean time; if he appear, he ought to be indicted and found guilty, before his recognizance be estreated; for his recognizance cannot be estreated *quia non comparuit*; and therefore there must, upon the record of the court, a breach of the peace appear, which cannot be, unless he be found guilty on an indictment; and therefore if it be estreated before, such estreat is irregular; but there may be recognizances taken to the king upon other conditions than that of appearing in courts of justices, and then the condition may appear to be forfeited; and if so, the process must go out of the *exchequer*; and formerly they held that such recognizance did not bind the lands of the subject, till they were returned of record; but by 33 H. 8. c. 39. it is ordered, that such debts should bind as statute staple; for since these and statutes merchants were allowed, by former statutes, to bind the lands and tenements from the time of making them, though contracted in private, and not of record, they thought it reasonable the king should have the same privilege as private persons; since the king's recognizances, though taken before justices, are to be returned of record the next quarter-sessions; and after they are become forfeited, they are estreated by the sessions into the *exchequer*. *Ibid.* 104.

21 Ed. 4. 271

And since recognizances were taken, both in the court of the *king's bench*, and *common pleas*, and *chancery*, which do not appear on the *rotulus magnus*, till they are forfeited and estreated into the *exchequer*; yet that being of course done in a short time, there did little prejudice accrue to the subject, by not seeing the whole charge of the king's debt on the *rotulus magnus*. *Ibid.*

And when such recognizance or bond is returned into the court of *exchequer*, if there be a warrant of attorney to confess judgment, judgment is immediately confessed to the king, and on such judgment

ment the process issues, as on other ordinary judgments of the king; but if there be no warrant then a *scire facias* issues, and the king has judgment on the *scire facias* on 2 *nibils returned*. *Ibid.* 106.

All courts of record, where the fines are not granted away by letters patent, transmit their *estreats* to the lord treasurer's remembrancer's office; and these, with those fines and amerciaments that are imposed in the *exchequer*, in the king's *remembrancer's office*, and clerk of the *pleas office*, were delivered to the clerk of the *pipe* formerly, who put them amongst the *nova oblata* on the great roll.

But towards the reign of *Ed. 3.* the casual revenue being so much increased, that the clerk of the *pipe* could not transcribe and ingross them all on his annual roll, and many of them being small and paid on the first demand, it was necessary to make them part of an annual charge in the same manner as the other annual revenue of the king was; therefore a new officer was invented, *viz.* the clerk of the *estreats*; and instead of delivering such *estreats* of the *exchequer* and other courts, to the clerk of the *pipe*, it was henceforward delivered to him, and he issues a distinct process from the summons of *pipe*, *viz.* the summons of the *green wax*, which though it be almost in the same words with the summons of the *pipe*, yet it is different in the charge; for the casual revenue is only charged in the summons of the *green wax*. *Ibid.*

Clerk of the
estreats;

and foreign
apposer.

There was likewise a new officer, before whom the sheriff was to account on his process, who is called the foreign apposer; perhaps he was called foreign, because he was apposer in court, or rather because this was a foreign and distinct account from that of the great roll, which was carried on by itself; the foreign apposer sends the debts *nichil'd* by the sheriff, to the clerk of the *pipe*, which then being presumed to be debts that will stand out some time, are by him entered on the great roll, and he sends out the second process of the *pipe*; because having already been on process on the summons of
the

the *green wax*, it has answered *Magna Charta c. 8.* by which no sheriff or bailiff shall seize lands for the king's debts, so long as the present goods and chattels of the defendant shall suffice, and the debtor be ready to satisfy the same; and the pledges of the debtor shall not be distrained, as long as the principal debtor shall be sufficient. *Ibid.* 108.

The duty of the several courts and their officers, with respect to estreats into the exchequer, and first of the chancery.

The king's chancellor for the time being causes the clerks of the chancery, to whom it doth appertain, to inroll, or cause to be inrolled distinctly and plenarily, in the patent rolls of the chancery, all and singular charters, letters patent, writs patent, writs close, commissions, licences and pardons of alienations, licences, *ouster le mains*, writs of *diem clausit extremum*, *man' amoveas*, *qui plur'*, and all other writs, acts, and instruments which pass under the broad seal, whereby any farms, fee-farms, rents, services, debts, accounts, fines, petit or gross issues, or amerciaments, homages, fealties, or relief, reventions, or other profits or commodities, are reserved or may accrue to the king's majesty, before the same charters, letters patents, or other the premisses shall be delivered out of the hanaper of the said chancery. *Ibid.* 128.

Then the master of the rolls yearly, from time to time, transmits in estreats of parchment prest writ, in a conform measure, and of one size, written on the one side only, all and singular the said charters, letters patents, writs and other the premisses out of the said patent rolls, and the same estreats the said chancellor, or the said master of the rolls for the time being, shall deliver in their own persons yearly to the barons of the *exchequer*, in the terms of *Michaelmas* and *Easter*, for execution and process to be had and made thereupon for the king.

Madd. 707. 708.

After the receipt of the estreats of chancery by the hands of the chancellor, or master or keeper of the rolls, the chief remembrancer of the exchequer shall take the same estreats by the delivery of the said barons, and shall number the number of the prefts of the same, and shall endorse the last of them in this manner; *hunc librum sive rot'um continen' membran' liberavit hic: A. B. cancellar' domini regis die anno regni ejusdem domini regis pro execution' inde ad opus domini regis fiend'.* *Ibid.* 130.

And after that he shall file, and strictly bind all the said prefts together in one head, with a good sirple or ferrel of parchment; and then he shall mark every roll thereof with numbers, viz. I. II. III. and so forth, in every roll of the same estreats wherein any matter doth commence, and is not depending wholly upon the preceding; and then he shall indorse the said sirple in this manner and form, *scilicet, Original' de anno regis nunc, &c.* and sign it with his name. *Ibid.*

These originals were the old basis and foundation of the process of the court of exchequer; and as the original writs in the court of chancery directed into the common pleas were the foundation of all the civil business; so the originals out of chancery were the great foundation of the king's court of revenue in the exchequer, and this roll was to be a charge to the sheriffs and escheators for that year; and immediately upon this roll there was process made out for the getting in all manner of debts and duties contained in the same.

This is the way of dealing with the executory part of the revenue; for they did not transcribe that upon the *rot'us magnus*, because it was no part of the standing revenue, and therefore the roll was made by the king's remembrancer from the estreats of the chancery, and writs were to issue to the several officers to get in the revenue, but the writs themselves were made out of the remembrancer's office upon the roll, and upon these writs the
sheriff

sheriff answers in open court before the barons, and the escheators before a baron and an auditor.

There were two sorts of offices, one of *intituling*, Two offices. and another of *instruction*. The office of intituling was always by inquisition found by commission under the broad seal, for the king could not take but by matter of record, no more than he could give without matter of record; and this was a part of the liberty of *England*, that the king's officers might not enter upon any other man's possession till the jury had found the king's title; therefore where the king's title appeared of record, his officers might enter without any office found. As where the lands are held of the crown, and the tenant dies without heirs, the officers of the king may enter, because the tenure is upon record whereby the king's title appears; so by the common law, where the land belonged to nobody, the king's officers may enter, because by the law the land is in the crown, for the law intitles the king where the property is in no man; but if any body else is in possession, the lands cannot be devested without matter of record, and where the king is intitled by matter of record, there is no need of any office to intitle him. *Ibid.* 132.

The offices of instruction settled the annual value of lands, and by that value the escheator accounted, unless the court, by putting it up to auction, found any person that would give more for the land, and then they let it by lease under the exchequer seal.

But by the statute 1 H. 8. c. 10. if any body will pretend title, and come in and traverse the office, and find good securities, then he shall have the lease of the same lands. *Ibid.*

This begat the usual process in seizure of goods; Brevia facienda. for when the officer had seized, if the port be not one hundred miles distant from town, he is to take out a writ of appraisement in fourteen days, and on this writ of appraisement they return the value of the goods, as it is found by the jury; but upon the return of the writ of appraisement the goods

are set up to cant, lest they should not be appraised according to the true value; and if any claim were put in, and the goods were unsold, the claimer was permitted to have a writ of delivery, upon giving security to answer the value of the goods. And thus the practice touching personal things is conformable to the ancient practice touching real estates.

The casual Revenue

See Cotton *supra*,
p. 15, 40, 86,
112, 127, &c.

Arose out of fines and amerciaments. The fines were properly set in criminal proceedings, and were estreated by the king's bench and justices in eyre into the exchequer; the fines were set by the court as ransoms from imprisonments, and the amerciaments by *Mag. Charta* were to be affeered, and these were to be set in the common pleas in civil actions, either on the plaintiff for false clamour, or on the defendant for detaining a just debt; these amerciaments were delivered over by the clerk of the warrants to the clerk of the assizes, who used to deliver them to the coroners of the county, who affeered such amerciaments as indifferent persons of the neighbourhood elected by the whole county; and after the coroners had affeered such amerciaments, they delivered them back to the clerk of the assize, and he delivered them to the clerk of the warrants, and from thence they were *estreated by the judges into the exchequer*: but the judges of the king's bench having a civil jurisdiction over their prisoners, they were wont to order amerciaments, and sent them down to be affeered; and so the common pleas in actions of trespass, which were *vi et armis*, set fines on such trespassers, which were estreated into the exchequer without any affeement.

But from the time that justices of the peace were appointed, the casual revenue very much increased; and this was by 1 E. 3. c. 16. before that time indictments were found at the *torn* before the sheriff, and he issued his *capias*; but after the justices

justices of peace were appointed, the justices issued their warrants in order to apprehend the offender; for being assigned to keep the peace in each particular county, they could issue their warrants in order to take up an offender; and if it were a bailable offender, they bound him over by recognizance, either to appear at the assizes or quarter-sessions, and likewise bound over the evidence to prosecute; and if the prosecuted or prosecutor did not appear, such recognizance was forfeited, and the clerk of the sessions, or the peace, respectively, estreated such recognizance into the exchequer. *Gilb. Exch.* 135.

This so increased the casual revenue, that the comptroller of the pipe could not undergo the whole work; and therefore a new officer, intitled the clerk of estreats, was introduced to write the summons of the green wax, in assistance of the comptroller of the pipe; so that the summons of the green wax was *totidem verbis* with the summons of the pipe, only issued by a different officer, and the charge of the casual revenue is annexed to such summons of the green wax.

When it issues to the sheriff, the sheriff is to levy the same; and the sheriff, upon his process of the green wax, is to account before the foreign apposer, which foreign apposer was instituted at the same time with the clerk of the estreats; he was called apposer for the same reason that such accounts of the sheriff, are called apposals, (*i. e.*) because the sheriff was then to apponere, or place his items to account, and the sheriff before such apposal did *tot* (a), *nihil*, and *O' ni'*, according as the case required. *Ibid.*

This

(a) This word *tutting*, or *totted*, is a word used of a debt which the foreign apposer, or other officer in the exchequer, setteth for a good debt to the king, by writing this word (*tot*) unto it. *Dalt.* 472. And this word *nihil*, or *nihil*, is a word set upon a debt by the foreign apposer in the exchequer, when that it is alleviable, or cannot be levied. *Ibid.* So that it seemeth, by *tutting* is understood charging, and by *nibiling* is understood discharging the party indebted.

This officer was called the foreign apposer, because the account on which he sat was called the foreign account; for the account of the certain revenue was the original jurisdiction of the court of *exchequer*, and belonged to that court, from the original sent from *chancery* into that court; but the casual revenue did not arise out of such originals, but was sent into the *exchequer* by estreats out of other courts, and therefore was called the foreign revenue. *Ibid.*

If any lords of leets or liberties claim any fines and amerciaments, they are to appear before the *foreign apposer*, at the time when the sheriff is apposed, and there they must claim such fines and amerciaments as belong to them; and if their claim be allowed, such fine is set off to the claimer. *Ibid.*

It behoves sheriffs or under-sheriffs, upon making their accounts, to take care what they *tot*, and whom they *nihil*; that is, that they charge or discharge men honestly; for if they *tot* or *charge* any thing, though it can never be levied, yet it must be paid. *Dalt.* 478.

Sheriff's Accounts.

The sheriff is the king's bailiff of his county, and there were several farms of the county that were under the particular care of the sheriff, that is to say, all those farms that were held of the king as of his county; these were under the survey of the sheriff, and he was charged with them, being obliged to answer them in all events; and for them he pays in his profers, because they were reckoned part of his bailiwick. *Gilb. E.* 144.

The sheriff is a patent-officer of the crown, and is constituted the king's bailiff to gather his rents; and therefore after the said constitution, the first thing is to prefix him a day to account, and there were two days prefixed, one after the *utis* of *Easter*, and the other after the *utis* of *Michaelmas*; and these were called his profers, because he then did profer

profer the king's rents; they gave him two times in a year, because the rents were generally payable half-yearly. It is the duty therefore of the sheriff to come at the day of prefixion (a), and if he does not, he is considered as an accountant in default, and therefore a fine of 5*l.* *per diem* is set upon his head for four days together to bring him in; and if he do not come in at the end of the fourth day, then an attachment *fi. fac'* and *cap. in manus nomine distriction'* issues against his body, lands, and goods, and these issue to the marshal of the court, in order to bring him in; but what goods are taken, or what profits of lands are seized, are forfeited to the king till he comes in to account, and do not go in discharge of his debt, but are pains to make him account, and must be compounded by the sheriff.

The reason of this proceeding is, because the prefixion of a day is in nature of a summons for him then to appear, and when he is proclaimed upon pain for four days after, which are in nature of days of grace, then he is presumed to have the king's money in his hands, and to have gone off with it, and therefore all the process is to be made against him, as against an accountant that had been summoned. *Ibid.*

They give security to answer their profers, and all other the profits of the sheriffwicks, before their patents are made out, but they do not sue the security, unless there is a deficiency in the sheriff's effects. If the sheriff keeps his day of prefixion, he is then to pay in his profers, and to be apposed before the barons, on the writs that issue from the king's treasurer's remembrancer to get in the king's debts; and upon the prefixion at *Michaelmas*, he is charged before the cursitor baron on the summons of the pipe, for all the farms that belong to his county; and these were called *vicontial* rents, or the *corp' comitat'*, or the *proficua comitat'*; but the clerk,

(a) A sheriff ought to make his account in person, or by attorney. *Mad.* 648. And his account shall be annual, and in a regular manner. *Ibid.* 629.

clerk, to save the expence of time and pains, instead of writing several little rents in charge, writ a gross *de corp' comitat'* 100*l.* & *de numero comit'* 50*l.* as is herein before mentioned, so that there was one sum charged upon him, and the sheriff accounted for the particular rents, that made it up, by a roll which he kept in his custody; the rents which were to be accounted *numero*, were anciently reserved in fine silver, and therefore they gave so much more in tail, *v.z. in Com' Bed. & Buck.* 13 *E.* 3. *nic' passe len' de* 18*l.* 4*s.* 4*d.* *numero pro* 17*s.* 7*d.* *Blanc, Hale* 29. and this negligence in the clerk was the loss of many rents to the crown; but in *Norfolk*, where the rents were greater, they wrote the particular *vicontiel* rents in charge, and so they remain on the pipe-roll to this day. *Ibid.* 148.

The sheriff pays in profers to the value of the county rents, because these he must *tot* or *O' ni'* (a) before the curfitor baron, and he cannot here *nichil*, because the lands might be seized into the king's hands, and out of the profits and issues the rent might be answered, and the sheriff is looked upon to farm the rents, and therefore is obliged to pay them into the crown, but he may *O' ni'* these rents; for if the king grants any of them, he may shew the record in his discharge; and all these rents being within the survey of the sheriff, he must acquit them below on receipt of the rents, for the sheriff as farmer of the county was answerable for them.

As to the sheriff's *discharge*, first he may discharge himself by an *O' ni'* (i. e.) by order of court upon any particular article, or by shewing the king's great or privy seal, discharging it out of the account. *Ibid.* 151.

(a) *Oneratur nisi habeat sufficientem exonerationem, &c.*

*Patents and Accompts.**Fees for suing out Patents, and passing Accompts.*

FOR the greater ease of sheriffs in the execution of their offices, and passing their accounts, be it enacted that the several officers of his majesty's high court of chancery, court of exchequer, and the several auditors and receivers of the revenue of the crown in *Wales*, and their substitutes, deputies, agents, clerks, and all other persons whatsoever claiming any fee to him or them from any sheriff of *England* or *Wales*, for making out the patents or commissions, or the *dedimus* to or for entering their recognizance, or for writing out and return of their process, or for their appraisals, or casting out of court, or for passing their accompts, or for making their *quietus*, or for any other matter concerning their sheriffalty, may receive for their pains the several fees in the schedule hereafter mentioned, all which fees the said officers, deputies, clerks, &c. may claim and receive, and shall not demand any greater fee or reward whatsoever; and if any offend, such person shall forfeit to the party aggrieved five pounds, and treble the sum taken, over and above his just fees, with treble costs; all which shall be ordered to the party aggrieved by the court of *exchequer*, upon complaint and proof of such offence made before the barons of the said court in such short and summary way and method as to them shall seem meet.

3 Geo. I. c. 15. s. 1.

That the lord high treasurer, or commissioners of the treasury for the time being, the chancellor and chief baron of his majesty's court of *exchequer*, and the rest of the barons of that court, or any two of them, shall, at the request of any sheriff or sheriffs, or as often as they shall think fit, call before them the remembrancer in the court of *exchequer*, (commonly called the treasurer's remembrancer,)

Clerks and officers concerned in passing the said patents, or their accounts, to take only the fees in the schedule annexed, on forfeiture to the party aggrieved of 50*l.* and treble the sum taken above the said fees, with treble costs, to be ordered on complaint by the *exchequer*, in a summary way.

The lord treasurer, chancellor of the *exchequer*, and barons, or any two of them, may order clerks and officers of the *exchequer*, &c. to give in a particular of

rents and certainties yearly, set in process to the sheriffs, and reduce and settle the same, with regard had to the value of the rents of each county, and orders thereupon to be made and entered of record in the exchequer; and the rents so settled to be the profers of each county, payable to the sheriff, and no other.

and the clerk of the pipe, or their deputies, secondaries, and such other officers as they shall think fit; and cause the said officers to bring before them an account of all the rents and certainties written out yearly in processes, to the sheriff of each respective county in *England*, to levy for the crown; and upon due examination had, are empowered to alter, reduce, or to establish the several sums wherewith the said sheriffs stand on the rolls of profers in the said court of *exchequer*, to such reasonable sums as to them shall seem just, with regard to the amount or value of the rents in each county respectively; and that orders of the court of *exchequer* be drawn up, and entered upon record in the several offices of his majesty's remembrancer, the lord treasurer's, or the commissioners of the treasury's remembrancer, and clerk of the pipe, some time before the last day of *Michaelmas* term following; and that the sum so reduced shall be taken to be the profers of each county, and the rolls of profers, from time to time, shall be made conformable thereunto; and the said sums so reduced, and no other, shall be paid by the said respective sheriffs for their profers, at the days and times, and in the manner formerly used for profers. *f. 2.*

Sheriff not obliged to charge in his accounts, money paid by virtue of the acts 4 and 5 of W. and M. for apprehending highwaymen; or 6 and 7 W. 3. for preventing counterfeiting and clipping the coin; or 5 Anne, for apprehending housebreakers; but may, on the judge's certificate of the conviction of such offenders, and the receipt

And whereas, by an act made in the fourth and fifth years of king *William* and queen *Mary*, for encouraging the apprehending of highwaymen; and of one other act made in the 6th and 7th years of his said late majesty king *William* the third, to prevent counterfeiting and clipping the coin of this kingdom; and of one other act made in the 5th year of queen *Anne*, for encouraging the apprehending of housebreakers, the respective sheriffs of *England* and *Wales* are obliged to pay the rewards of 40*l.* as is directed, upon the convictions of highwaymen, clippers, coiners, or housebreakers, to such person who shall bring to such sheriff a certificate under the hand of the judge or justices before whom such offenders were convicted, directing payment thereof, under the penalty of forfeiting to the party

party entitled thereto, double the sum with treble costs of suit; which reward, being so paid, is by the said several acts ordered to be allowed to such sheriff upon his account; and if there should not be remaining in the hands of such sheriff monies sufficient, that the surplufage occasioned thereby should be repaid to such sheriff, by the lord high treasurer, or the commissioners of the treasury for the time being, out of the revenue of the crown, upon certificate thereof from the clerk of the pipe, or by the auditor of *Wales*, as by the said respective acts may more at large appear: And whereas, since the making of the said acts it hath been found, that many sheriffs have been put under great difficulties thereby, not only by reason of paying down great sums of money for the rewards aforesaid, before the publick revenue writ out to them in process could be levied or collected by them, but also by reason that such sheriff cannot have a certificate of his surplufage from the clerk of the pipe or the auditor of *Wales*, until he hath fully finished his account, and be dismissed the court; by which means, the sheriff is kept a long time out of his money so disbursed: Be it enacted, That no sheriff shall be obliged to bring or charge in his accounts, any sum to be paid for the rewards above mentioned, but shall immediately apply for the same to the lord high treasurer of *Great Britain*, or commissioners of the treasury for the time being, who, upon inspecting a certificate of the due conviction of such offender, for which such reward shall be ordered to be paid as aforesaid, together with the receipts or acquittance of the parties entitled to receive the same, shall forthwith pay to such sheriff all such monies so disbursed, without fee. *f. 4.*

That no sheriff or under-sheriff shall be attached or taken in custody by any officer of the court of *exchequer*, for not being apposed upon any writ or process for not finishing his accounts in due time, or for any contempt or neglect relating to his account,

of the party entitled to the reward, apply to the lord treasurer, &c. who shall forthwith repay him the sums so disbursed, without fee.

No sheriff or under-sheriff to be attached, &c. for not finishing his accounts but by writ under the

exchequer seal or by warrant of a baron, wherein such sheriff's name and offence shall be specified.

account, but by writ under the seal of the said court of *exchequer*, or by warrant for that purpose, to be signed by the lord chief baron, or one of the barons of the *coif* of the said court of *exchequer* for the time being, to be executed by the marshal of the said court, or his deputy; in which warrant the name of such sheriff or under-sheriff shall be particularly inserted, and his offence specified. *fi* 5.

When the sheriff has finished his account he shall have his *quietus*.

If any clerk or other person concerned in passing sheriff's accounts shall hinder or retard the same, or any way prevent his being apposed, and cast out of court in due time, or after payment or tender of fees, *infra*, shall refuse or neglect to make out, or sign and inrol his *quietus*, he shall make such satisfaction to the party grieved, as the barons on complaint shall order in a summary way.

No sheriff in England (except for Chester, Lancaster, Durham, and the Welsh counties) who shall be in surplussage by any disbursements for the king's service, except the rewards appointed by the acts *supra*, sect. 4. shall be obliged to take out a re-

And for preventing delays and unnecessary attendance of the sheriffs in passing their accounts, if any officer, concerned in passing of sheriffs accounts, shall wilfully retard any sheriff in the passing of his accounts, or by his wilful neglect or absence, or by other undue means and ways prevent any sheriff from being apposed or cast out of court in due time, or after payment or tender of his or their due fees herein ascertained, shall refuse or neglect to inrol, make out, sign, and deliver his *quietus* in due time, in every such case the person so offending shall make such satisfaction to the party grieved, as shall be adjudged by the barons, upon complaint made before them in such short and summary way and method as to them shall seem meet. *fi* 6.

And whereas it frequently happens that a sheriff may disburse more money for the service of the crown than his whole charge amounteth to, by reason whereof such sheriff must necessarily be in surplussage upon his account: And whereas such surplussage cannot be obtained by the usual course of the *exchequer*, but by record of surplussage, which is very dilatory and expensive to the sheriff; be it enacted, that if any sheriff of any county in *England* (except the counties palatine of *Chester*, *Durham*, and *Lancaster*, and the several counties of *Wales*, which do not pass their accounts before the clerk of the pipe) shall happen to be in surplussage upon his account, by reason of any disbursements whatsoever by him made for the

the service of his majesty, (other than for the rewards of 40 l. respectively allowed and given by virtue of the several acts herein-before mentioned, to such persons as shall apprehend a clipper, coiner, highway-man, or house-breaker,) such sheriff shall not be obliged to take out a record of surplufage for the same, but shall apply to the lord high chancellor or to the commissioners of the treasury for the payment of such surplufage from the clerk of the pipe or his deputy. *Stat. 7. See stat. 3. 9. 13, 14, 15, 16. under title Poundage or Extents.*

And for the more effectual enforcing and obliging the clerks of assize, clerks of peace, clerks of the commissioners of sewers, clerks of the market, town clerks, or other persons to whom it doth or may belong to make returns of estreats, into the court of *exchequer*, to make out and deliver their respective estreats, duplicates, certificates, and schedules in due time, so that the sheriff may not be hindered or retarded in the passing of his account for want of the said estreats, according to the direction, purport, and intent of an act made in the 22d and 23d years of the reign of his late majesty King *Charles* the 2d, intituled *an act for the better and more certain recovery of fines and forfeitures due to his majesty*, and made perpetual by an act made in the 4th and 5th years of the reign of their late majesties King *William* and Queen *Mary*; be it enacted by the authority aforesaid, that over and above the penalties mentioned in the said acts, or either of them it shall be lawful for the barons of the court of *exchequer*, from time to time, to amerce such clerk of the assize, clerk of the peace, clerk of the commissioners of sewers, clerk of the market, town clerk, or other person, to whom it doth or may belong to make returns of estreats into the said court of *exchequer*, for refusing or omitting to perform his duty in returning the said estreats, at the times, and according to the direction of the said two acts, and to cause the said amerciaments to be levied and answered by such ways and means,

cord of such surplufage, but may apply to the lord treasurer, who is to pay the same, on producing the clerk of the pipe's certificate thereof.

Besides the penalties in the acts of 22 and 23 Car. 2. for better recovery of fines and forfeitures to the king made perpetual by a & 5 W. & M. the barons may amerce clerks of the assize, of the peace, and commissioners of sewers, clerks of the market, town clerks, &c. refusing or neglecting to return estreats into the *exchequer*, according as the said acts direct, and may cause such amerciaments to be levied as usual.

and in such manner, as other amerciements set in the said court may or have been used to have been done. *sect. 12.*

Sheriffs of Wales
to account be-
fore the auditor.

" The sheriffs of *Wales* shall not be compelled to appear to be apposed in the *exchequer*, but shall be apposed before his majesty's auditor in *Wales*; and the *quietus* of the said sheriffs under the auditor's hand shall be a sufficient discharge." *Ibid. sect. 24.*

Countiespalatine

" The auditors of *Chester*, *Lancaster*, and *Durham*, shall state the accounts of the sheriffs of the said counties, and appose them touching the execution of the king's process; and the said sheriffs, on such accounts may sue forth their *quietus est* from the said auditors, according to the ancient usage." *Ibid. sect. 25.*

City of Chester.

" The sheriff of the city of *Chester* shall account as formerly before the mayor, touching all matters granted from the crown to the city by charter." *Ibid. sect. 26.*

Sheriffs of the
city of Chester
to account before
the auditor of
the county.

" The sheriffs of the city of *Chester*, as for all other matters not granted to the city, and for which the sheriffs are accountable to his majesty, shall account for the same before, and be apposed by, and obtain their *quietus est*, from the auditor of the county of *Chester*, in the same manner as the sheriffs of the county of *Chester*." *Ibid. 27.*

A Schedule of Fees to be paid for passing the Patents of the several Sheriffs of England and Wales.

The Charge taken in the Court of Chancery for the Patents of the several Sheriffs of England and Wales, in which is included the Dedimus, Writs of Discharge, and Assistance (a).

	£.	s.	d.
STAMP for patent of office	-	16	0 0
Ditto for patent of assistance	-	16	0 0

(a) These are the new duties, since the passing the above Act.
Fee

	£.	s.	d.
Fees to the officers	-	-	8 13 6
There cognizance and duty in a <i>Welsh</i> patent, more	-	-	0 5 0

*Fees to be paid by the Sheriffs of England and
Wales for passing their Accompts (a).*

*Fees to be paid to the Clerk of the Pipe at the Apposal
of Sheriffs.*

	£.	s.	d.
CANT'	-	-	1 13 4
Cumbr'	-	-	1 13 4
Ebor'	-	-	5 0 0
Hunt'	-	-	1 6 8
Lond' and Mid'sex	-	-	2 0 0
Lincoln	-	-	2 13 4
Monmouth	-	-	1 13 4
Northumber'	-	-	1 13 4
Rutland	-	-	1 6 8
Westmor'	-	-	1 6 8
The rest of the counties of <i>England</i> , each	2	0	0

*Fees to be paid to the Clerk of the Pipe at casting out of
Court, and for the Quietus, and Chancellor's Al-
lowance.*

	£.	s.	d.
CANTAB' Hunt'	-	-	4 3 4
Cumb'	-	-	2 16 8
Ebor'	-	-	10 3 4
Kent	-	-	4 3 4
Lond' Mid'sex	-	-	5 6 8
Monmouth	-	-	2 16 8
Northumber'	-	-	2 16 8
Rutland	-	-	1 16 8
Westmor'	-	-	2 3 4
The rest of the counties of <i>England</i> , each	3	3	4

(a) By 3 Geo. 1. c. 15.

Casual Fees to the Clerk of the Pipe for the Allowance of Justices' Wages in the Counties following, viz.

	£.	s.	d.
E BOR' - - - -	1	0	0
Lond' Mid'sex - - - -	0	13	4
Lincoln - - - -	0	10	0
The rest of the counties of England, if any such allowance be made -	0	6	8
For setting of a seizure or debt by petition, or judgment of court, when it happens - - - -	0	1	0
For allowance of a record of surplufage for the first five pounds -	0	6	8
For every other five pounds -	0	3	4

Fees to be paid to the Clerk of the Pipe for the several Cities and Accompting Towns for their whole Accompt, and Quietus thereupon.

	£.	s.	d.
C IVIT' Bristol' } of each -	1	10	0
Civit' Glouc' }			
Civit' Ebor' }			
Vil' Novi Castri }			
Civit' Cantuar' }			
Civit' Coventry }			
Civit' Exon' }			
Civit' Litchf' }			
Civit' Lincoln }			
Civit' Norwich }			
Vil' Kingston super }			
Hull }			
Vil' Not' }			
Vil' Pool }			
Vil' South'ton }			

Fees to be paid to the Secondaries, and others the Sworn Clerks in the said Office, at the Appraisals of Sheriffs at the coming into their Account, and writing their Annual Books, together with the Vicontiels of the Foot or Charge of their whole Account.

		£.	s.	d.
BEDD'		0	6	0
Berks	} each			
Bucks		0	6	0
Cant' Hunt'		4	13	4
Cornub'		6	0	0
Cumbr'		3	13	4
Derb'		5	0	0
Devon'	} each			
Dorset		6	0	0
Essex		10	6	8
Ebor'		17	0	0
Glouc'	} each			
Heref'		6	0	0
Hert'		5	6	8
Kant'		6	13	4
Lincoln		4	13	4
Leic'		6	13	4
Lon' Mid'sex, two Sugar Loaves and		4	0	0
Monmouth		3	0	0
Norf'		6	13	4
North'ton		4	10	0
Northumber'		4	13	4
Nott'		5	10	0
Oxon'		6	0	0
Rutl'		3	6	8
Sur'	} each			
Suffex		5	13	4
Salop	} each			
Suff'		6	0	0
South'ton		7	13	4
Staff'		5	13	4
Somerf'		9	6	8
	c c 3			West-

	£.	s.	d.
Westmor'	-	-	2 0 0
Warr'	-	-	4 16 8
Wigorn'	-	-	6 0 0
Wilts	-	-	8 0 0

Fees for casting out of Court, and for Quietus, viz.

	£.	s.	d.
B EDD'	-	-	6 0 0
Bucks	-	-	5 6 8
Berks	-	-	5 6 8
Cant' Hunt'	-	-	4 13 4
Cornub'	-	-	5 13 4
Cumbr'	-	-	4 13 4
Derb'	-	-	5 6 8
Devon'	-	-	8 6 8
Dors'	-	-	6 13 4
Essex	-	-	11 0 0
Ebor'	-	-	23 6 8
Glouc'	-	-	7 6 8
Heref'	-	-	6 0 0
Hert'	-	-	6 13 4
Kant'	-	-	11 13 4
Lincoln	-	-	6 0 0
Leic'	-	-	8 6 8
Lon' Mid'sex, two Sugar Loaves and	-	-	4 0 0
Monmouth	-	-	3 0 0
North'ton	} each	-	7 6 8
Norf'		-	6 6 8
Not'	-	-	6 6 8
Northumber'	-	-	4 13 4
Oxon'	-	-	8 6 8
Rutl'	-	-	2 0 0
Staff'	-	-	6 13 4
Surr'	} each	-	5 16 8
Suffex		-	5 6 8
Salop	-	-	6 0 0
Suff'	-	-	8 6 8
South'ton	-	-	10 0 0
Somerf'	-	-	Westmor'

				£.	s.	d.
Westmor	-	-	-	2	8	4
Warr	-	-	-	5	10	0
Wigorn	-	-	-	7	6	8
Wilts	-	-	-	8	13	4

Fees of Sheriffs for Cities and Accompting Towns.

	L.	s.	d.
CIVIT' Bristol	-	-	3 6 8
Civit' Cantuar'	-	-	2 13 4
Civit' Ebor'	-	-	5 0 0
Civit' Coventry	-	-	2 13 4
Civit' Exon'	-	-	1 10 0
Civit' Glouc'	-	-	2 13 4
Civit' Lincoln	-	-	2 13 4
Civit' Litchf'	-	-	1 6 8
Civit' Norwic'	-	-	3 6 8
Civit' Wigorn'	-	-	2 0 0
Vil' Kingston super Hull	-	-	3 6 8
Vill' Nott'	-	-	2 0 0
Nov' Castrum	-	-	2 13 4
Vil' Pool	-	-	1 10 0
Vil South'ton	-	-	2 0 0

Memorandum, *The Sheriffs of the Counties-Palatine of Chester and Lancaster do not account before the Clerk of the Pipe, but before the respective Auditor of those Counties; but their Books being writ every Year, and Certificates made (of what they take in Charge) to the Auditor, the following Fees are to be taken by the Clerk of the Pipe, and the sworn Clerk for those Counties, viz.*

	£.	s.	d.
Chester	2	3	4
Lancast'	4	6	8

Fees to the first secondary for allowing the sheriff's tallies of profer in each county

In each city and town	-	-	0	3	4
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Making up the sheriff's sum containing
his whole charge in York - - 0 13 4

cc 4 Lond

	£.	s.	d.
Lond' Mid'sex - - -	0	13	4
For the rest of the counties, each -	0	6	8
Allowing a tally <i>de remanente compi'</i> or any other tally <i>de sol'</i> in his account, when such happen -	0	1	0
For charging a post scrow, which rarely happens -	0	3	4
To the second secondary for drawing down a debt received by <i>distring'</i> , or levied by writ of <i>fieri facias</i> from either of the remembrancer's office upon the scrow back -	0	3	4
If an extraordinary length -	0	6	8

To the Portubag.

	£.	s.	d.
FOR ingrossing the scrow of green wax of the sheriff of the county of <i>York</i> - - -	1	0	0
Lond' Mid'sex - - -	1	0	0
The rest of the counties of <i>England</i> , each	0	10	0
For the accompting towns and cities, each	0	3	4

*Casual and Accidental Fees to the sworn Clerks in their
respective Assignments, viz.*

	£.	s.	d.
FOR a <i>constat</i> of a seizure or debt in order to be ruled, or discharged	0	4	4
For settling of a seizure or debt upon a sheriff's accompt, by petition or judg- ment of court, when it happens	0	3	4
Filing the certificates of felons' goods, and charging the debts therein con- tained, each	0	6	8

For the Allowances of Justices' Wages.

	£.	s.	d.
YORK - - -	2	0	0
Lond' Mid'sex - - -	2	0	0
Lincoln			

	£.	s.	d.
Lincoln	1	0	0
The rest of the counties of England, each	0	13	4

For the Sheriffs' Allowances.

	£.	s.	d.
EBOR'	0	13	4
Lond' Mid'sex	3	6	8
The rest of the counties, each	0	6	8
Record of surplusage for the first five pounds	0	6	8
For every other five pounds	0	3	4

To the Writing Clerk for the Business of the whole Year.

	£.	s.	d.
CANT' Hunt'	5	0	0
Cornub'	6	0	0
Devon'	6	0	0
Ebor'	15	0	0
Kant'	7	0	0
Lincoln	6	10	0
Lond' Mid'sex	6	0	0
Monmouth	3	0	0
Rutland	1	0	0
Somers'	7	13	4
Sussex	3	10	0
Westmor'	2	0	0
The rest of the counties, each	5	0	0
Civit' Bristol	1	0	0
Civit' Ebor'	1	0	0
Civit' Norwic'	1	0	0
Kingston super Hull	0	18	4
Novum Castrum	1	0	0
Vil' Pool	0	6	8
The rest of the cities, each	0	13	4
Com' Pal' Cester'	0	6	8
Com' Pal' Lanc'	0	13	4

To be paid to the bagman of the office at the apposal of the sheriffs.

Of England, in each county, two shillings and six pence, and the casting out 5 0

And for each city and accompting town 0 2 6

Fees to be paid to the Comptroller of the Pipe.

	£.	s.	d.
FOR appofal of <i>London, Middlefex,</i> and <i>York</i> , each	-	-	2 0 0
For appofal of <i>Surry, Suffex, Rutland,</i> and <i>Westmoreland</i> , each	-	-	0 15 0
For appofal of every other county	-	1	7 6
For cafting out of <i>London, Middlefex</i> and <i>York</i> , each	-	-	2 0 0
For cafting out of <i>Surry, Suffex,</i> and <i>Rutland</i> , each	-	-	0 15 0
For cafting out of every other county	-	1	10 0
For return of fummons for <i>London, Mid-</i> <i>dlefex,</i> and <i>York</i> , each	-	-	0 5 0
For return of every other fummons	-	0	2 6
For petitions which feldom happen	-	0	2 6

The Fees to be taken by the three Clerks of the Comptroller of the Pipe, in passing Sheriffs' Accounts.

		Appofals..			Caff. out.		
		£.	s.	d.	£.	s.	d.
BEDD'	} each	1	2	6	1	0	0
Hertf'							
North'ton	} each	1	5	0	1	5	0
Surr'							
Rutland	} each	1	5	0	3	5	0
Lond' Mid'sex							
Cambr'	} each	1	12	6	1	10	0
Heref'							
Leic'	} each	1	15	0	1	15	0
Norf'							
Nott'	} each	1	19	2	1	16	8
Staff'							
War'	} each						
Suffex							
Derb'	} each						
Oxon							

		£.	s.	d.	£.	s.	d.
Cant' Hun:'	} each						
Glouc'		2	2	6	2	0	0
Kant'							
Essex							
Bucks	} each						
Monmouth							
Berks		2	9	2	2	6	8
Suffolk							
South'ton	} each						
Worcester							
Wilts		2	9	2	2	6	8
Salop							
Northumber'	} each						
Lincoln							
Cornwall		3	9	2	3	6	8
Devon'							
Dorset	} each						
Somerset							
Ebor'		4	16	8	4	16	8
Westmor'		0	17	6	0	17	6

For return of every summons, seven shillings and six pence, except *London*, *Middlesex*, fifteen shillings, *York* one pound and five shillings, and *Cornwall*, *Devon*, *Dorset*, *Lincoln*, *Somerset*, *Suffolk*, *South'ton*, *Wilts*, and *Salop*, each seventeen shillings and six pence. For the petition of allowance three shillings and six pence, except in *London*, *Middlesex*, and *York*, thirteen shillings and four pence; and in *Cornwall*, *Devon*, and *Somerset*, six shillings and eight pence each; for every other petition one shilling; and for the justices' wages in *London* and *Middlesex*, ten shillings.

Fees to be paid by Sheriffs in the King's Remembrancer's Office, upon giving Security when he enters into his Office.

	£.	s.	d.
THE stamp duty of the recogni-			
zance (a)	0	10	0
The caption fee before the baron	0	8	8

(a) The new duty to be added.

The

	£.	s.	d.
The king's remembrancer's fee for the same, for the counties of <i>York</i> and <i>Norfolk</i> , for each of them -	0	13	4
To him for every county of <i>England</i> , except <i>Lancaster</i> and <i>Durham</i> , and the several counties of <i>Wales</i> , which give no security in the <i>exchequer</i> -	0	10	0
To the attorney for making the recognizance, attending the baron, entering and inrolling the recognizance, making the <i>fiat</i> , and duty for the same, and filing the warrant of attorney	0	18	0
Upon the apposal of every sheriff upon the process returnable in <i>Easter</i> term to the deputy remembrancer -	0	5	0
To the attorney that receives and files the writs, and attends the apposals of the sheriffs -	0	4	4
The like upon the process returnable in <i>Michaelmas</i> term -	0	9	4
For making the certificate when the sheriff enters upon his accompt of what seizures are by him made upon the process returned in that office during this year -	0	4	4

Treasurer's Remembrancer's Office in the Court of Exchequer.

Fees taken of Sheriffs in the said Office on passing their Accompts by the Remembrancer.

	£.	s.	d.
UPON a baron's warrant for respiting a sheriff's apposal, or for a day over to finish his accompts -	0	4	0
Upon the view of a sheriff's accompts in <i>Easter</i> and <i>Michaelmas</i> term -	0	6	8
Upon the commission to swear a sheriff in the country to accompt -	0	6	8
15			Upon

	£.	s.	d.
Upon examining and ruling a sheriff's petition of allowance for the two days granted <i>ex gratia curia</i> for finishing his accompt, and for filing his affidavit of felons' goods	0	12	0
Upon examining and ruling any other petition in a sheriff's accompt, when any such happens	0	3	4
Upon a record of surplufage for the first five pounds	0	6	8
For every other five pounds	0	3	4
For filing any <i>constat</i> , warrant, or other exhibit.	0	1	0

By the sworn Clerks.

	£.	s.	d.
FOR making the view of a sheriff's accompt in <i>Easter</i> and <i>Michaelmas</i> term, five shillings each term, viz.	0	10	0
For giving a sheriff notice termly, during his year of office, of any information or plaint against him, according to the statute in that case made and provided, and for attending his appofals before the barons, and in <i>Easter</i> and <i>Michaelmas</i> terms, twenty shillings each term, viz.	2	0	0
For drawing any warrant to be signed by the chancellor, or a baron	0	6	8
For attending a baron for his hand there	0	3	4
For directing a sheriff in his business during the three terms he is upon his accompt, ten shillings each term, viz.	1	10	0
For making the commission to swear a sheriff in the country to accompt pursuant to a warrant from a baron for that purpose	0	10	0
For the oath thereunto annexed	0	6	8

For

	£.	s.	d.
For a high sheriff's warrant to be sworn to accompt, (when he comes in person,) and for attending his being sworn	1	0	0
For an under-sheriff's warrant	0	3	4
For attending and putting in a sheriff's bills of profers at the receipt of <i>exchequer</i> in <i>Cro' Cl' Pasche & Cro' Sci' Mich'</i> when this year is ended, at his swearing to accompt	1	6	8
For entering the two days <i>ex gratia curiæ</i>	0	6	8
For drawing a sheriff's oath touching felons' goods	0	6	8
For a copy thereof to transmit to the pipe	0	3	4
For a certificate of the execution of a process	0	6	8
For a search in order to make such certificate	0	3	4
For drawing any petition in parchment, and inrolling it	0	6	0
For inrolling a sheriff's bill of allowance	0	13	4
For inrolling a schedule in <i>enere constat</i> , or warrant by the roll	0	6	8
For a record or surplusage for the first five pounds	0	6	8
For every other five pounds	0	3	4
For copying any seizure made by a sheriff, <i>per theet</i>	0	0	8
For examining and signing the same	0	3	4
For a writ of assistance and seal	0	10	0
For attending at <i>Westminster</i> to dismiss a sheriff the court, on finishing his accompt	0	6	8

By the Filazer.

	£.	s.	d.
FOR entering a high sheriff's commission, or warrant, <i>ad computand'</i> on the scroll of accomptants	0	5	0
For			

	£.	s.	d.
For an under sheriff's warrant, and any warrant <i>ad recipiend' brevia</i> -	0	2	0
For the sheriff's tallies of proffers -	0	2	0
For entering a sheriff's writs on the bills -	0	2	0
And when he comes <i>post diem</i> and amer- ciaments are set by the court, then for each amerciamment one shilling, being usually six during his year, viz.	0	6	0

When any plea, composition, order, or the like, happens during a sheriff's accompt, through his defaults or contempts, he pays the same fees that are paid by other suitors.

*There have been some small Fees, time out of mind,
paid to the und.r Clerks, viz.*

	£.	s.	d.
FOR writing a warrant or affidavit	0	1	0
On return of procefs twice a year, five shillings, viz.	0	10	0
For ingrossing a commission, and oath annexed - - - -	0	5	0

As likewise to the Portubag, viz.

	£.	s.	d.
FOR carrying any writ to be sealed	0	0	6
For a commission -	0	1	0
A sheriff pays him at each of his appo- sals two shillings, viz. - -	0	4	0
And for postage of all his business, du- ring the time he is upon his ac- compt - - - -	0	5	0

*A Particular of such Fees as are to be paid by Sheriffs
in the Office of Remembrancer of the First Fruits
and Tenths in his Majesty's Exchequer.*

	£.	s.	d.
FOR attending the Sheriff's appo- sals at <i>Westminster</i> upon their return- ing of writs issued for arrears of first fruits, and for filing the same in <i>Easter</i> term, each - - -	0	4	4
The like for <i>Michaelmas</i> term - - -	0	4	4

*Fees to be received by the foreign Apposer, his Deputy,
or Chief Clerk, of all Sheriffs of Counties, Cities,
and Towns, at their Apposal upon the Summons of
the Green Wax, and for making out the Justices,
Wages when craved by the Sheriff.*

Counties	Apposal			Justices' Wages.		
	£.	s.	d.	£.	s.	d.
BEDFORD -	3	5	0	1	12	6
Berks -	3	5	0	1	12	6
Bucks -	3	5	0	1	12	6
Cambr' Hunt' -	3	5	0	1	12	6
Cornwall -	6	5	0	1	12	6
Cumberland -	3	5	0	1	12	6
Derby -	3	18	4	1	12	6
Devon -	7	5	0	1	12	6
Dorset -	4	5	0	1	12	6
Essex -	6	5	0	1	12	6
Gloucester -	4	5	0	1	12	6
Hereford -	3	5	0	1	12	6
Hertford -	3	18	4	1	12	6
Kent -	6	5	0	1	12	6
Leic' -	3	5	6	1	12	6
Lincoln -	6	5	0	1	12	6
Lond' and Mid'sex -	7	10	0	5	10	0
Monmouth -	3	5	0	1	12	6
Norfolk -	6	5	0	3	5	0
				North'ton		

Counties.	Appofals.			Justices' Wages.		
	£.	s.	d.	£.	s.	d.
North'ton	-	-	5 5 0	1	12	6
Nottingham	-	-	3 18 4	1	12	6
Northumberland	-	-	1 15 0	1	12	6
Oxford	-	-	3 5 0	1	12	6
Rutland	-	-	1 15 0	0	0	0
Salop	-	-	4 5 0	1	12	6
Somerfet	-	-	6 5 0	1	12	6
South'ton	-	-	3 18 4	1	12	6
Stafford	-	-	3 5 0	1	12	6
Suffolk	-	-	7 5 0	3	5	0
Surry	-	-	3 5 0	1	12	6
Suffex	-	-	3 5 0	1	12	6
Warwick	-	-	3 5 0	1	12	6
Westmoreland	-	-	1 15 0	0	0	0
Worcefter	-	-	3 5 0	1	12	6
Wilts	-	-	5 5 0	1	12	6
York	-	-	9 5 4	3	5	0

Cities.	Appofals.		
	£.	s.	d.
B RISTOL	-	-	0 17 6
Coventry	-	-	0 17 6
Canterbury	-	-	0 17 6
Exeter	-	-	1 12 6
Glouc'	-	-	0 17 6
Litchfield	-	-	0 15 10
Lincoln	-	-	0 15 10
Norwich	-	-	1 12 6
Worcefter	-	-	0 17 6
York	-	-	0 17 6

Towns.	Appofals.		
	£.	s.	d.
K INGSTON super Hull	-	-	0 15 10
Nottingham	-	-	0 17 6
Newcastle upon Tyne	-	-	0 17 6
Pool	-	-	0 14 2
South'ton	-	-	0 17 6

D D

Fees to be taken by the Clerk of the Extracts in his Majesty's Court of Exchequer, and by the sworn Clerk in that Office, of all Sheriffs accountable in the Exchequer upon their Apposals on the Summons of the Green Wax.

	£.	s.	d.
T O the clerk of the extracts for Northumberland and Westmoreland, each - - -	0	10	0
Of London and Middlesex - - -	1	2	0
Of the county of Rutland - - -	0	13	4
Of every other county, each - - -	1	0	0
Of the city of Exon - - -	0	10	0
Of every other city and town, each --	0	6	8
To the sworn clerk for writing out the sum- mons twice every year, and attending the ap- posals			

	£.	s.	d.
Of the county of Rutland - - -	0	9	2
Of Ebor' - - -	1	16	8
Of Surry - - -	1	13	4
Of Westmoreland - - -	0	16	8
Of the counties of Heresf', Hertf', Oxon, Suff', and South'ton, each - - -	1	0	0
Of every other county - - -	1	6	8
Of the cities of Bristol, Litchfield, and town of Pool, each - - -	0	5	10
Of the city of Exon - - -	0	10	0
Of every other city and town, each -	0	8	4
The fee due to the chancellor of the ex- chequer, his secretary, and clerk, for passing a sheriff's allowance, to be -	0	15	0

Fees to be taken by the Curfiter-Baron, and his Clerk, of the several Sheriffs of England.

	£.	s.	d.
T O the baron for swearing to their account, and signing their war- rant - - -	0	16	8
To			

	£.	s.	d.
To his clerk - - -	0	4	0
To the baron at their appofals -	1	0	0
To his clerk - - -	0	7	6
To the baron at their casting out of court	1	0	0
To his clerk - - -	0	7	6
Sheriffs of <i>London</i> and <i>Middlesex</i> , and sheriffs of the county of <i>York</i> , pay double fees, and the sheriffs of <i>Sussex</i> , <i>Surry</i> , <i>Rutland</i> , and <i>Westmoreland</i> , pay half fees.			

Fees certain and casual to be paid by the Sheriffs to the Marshals of his Majesty's Court of Exchequer, granted to them by Patent under the Great Seal without Salary.

	£.	s.	d.
ALL sheriffs of the counties of <i>England</i> come in <i>Easter</i> term to be apposed on their writs and process before the barons, and pay the said marshals (except <i>Rutland</i> and <i>Yorkshire</i>)			
<i>Rutland</i> to pay half that fee, viz. -	0	15	10
<i>Yorkshire</i> double - - -	0	7	11
	1	11	8

The same sheriffs are apposed again on the same writs and process, and to pay their fees as above in *Michaelmas* term.

Sheriffs of the cities and towns, and deputies of the cinque-ports, each of them to pay severally upon their appofals in *Easter* term, as followeth, viz.

	£.	s.	d.
LINCOLN, Canterbury, Pool, Gloucester, Wigorn, Nottingham, Coventry, Southampton, Litchfield and deputy of the cinque-ports -	0	8	8
York, Norwich, Exon, Newcastle, Hull - - -	0	13	4
Bristol city - - -	0	10	6

	£.	s.	d.
I N <i>Michaelmas</i> term the sheriffs of cities and towns, above apposed then, are to pay the same fees as paid in <i>Easter</i> term, and when sworn to accompt, are to pay no more	0	3	0
Bailiffs of liberties sworn to accompt are to pay each	0	0	8
Bristol escheator is to pay	0	3	4

I N <i>Michaelmas</i> term, sheriffs of counties prefixed that term to be sworn, and to take their accompts in charge before the curfitor baron, on the summons of the pipe, and before the foreign apposer upon the green-wax, viz. <i>Essex, Hertford, Kent, Cambridge, Huntington, Northampton, Lincoln, Stafford, Wigorn, Wilts', Cornub', Salop, Berks, and Bucks</i> , are to pay each	1	9	2
<i>Rutland</i> is to pay half that fee	0	14	7
<i>London and Middlesex</i> is to pay his fees for a whole year	5	12	0
<i>London</i> gauger then sworn in court is to pay	0	8	8

I N <i>Hilary</i> term, sheriffs of counties sworn and apposed before the curfitor-baron and foreign apposer, as in <i>Michaelmas</i> term, viz. <i>Surrey, Suffex, Oxon, Berks, Norfolk, Suffolk, Hereford, Dorset, Monmouth, Somerset, Derby, Nottingham, Devon, Gloucester, Warwick, Southampton, and Leicester</i> , to pay each	1	9	2
<i>York</i> pays double	2	18	4

	£.	s.	d.
I N <i>Easter</i> term, sheriffs of <i>Cumberland</i> and <i>Northumberland</i> , then prefixed and apposed on the summons of the pipe and green wax, before the cursitor- baron and foreign apposer, to pay each - - - - -	1	9	2
<i>Westmoreland</i> then to pay his fees for the whole year - - - - -	2	6	8
<i>Lancashire</i> for the whole year - - - - -	3	10	0
<i>Cheshire</i> for the whole year - - - - -	3	6	8
All sheriffs discharged by proclamation in the court, except <i>York</i> - - - - -	0	15	10
<i>York</i> is to pay - - - - -	1	11	8

	£.	s.	d.	Casual fees.
S HERIFFS attached by order of court or warrant - - - - -	1	13	4	
Sheriffs in custody <i>per diem</i> , until dis- charged - - - - -	0	6	8	

If the marshal rides into the country six pence
per mile forwards, and the same backwards,
towards his charges from the sheriff on whose
accompt he goes.

	£.	s.	d.
Every sheriff that hath further time given him by order of court, or warrant to pals his accompt, or to be apposed, to pay - - - - -	0	6	8

*The Fees to be taken by the four Usbers of his Majes-
ty's Court of Exchequer.*

	£.	s.	d.
O F every high-sheriff when he enters on recognizance in the exchequer - - - - -	0	8	0
Of every sheriff of a county sworn to answer upon his two apposals on the king's remembrancer, treasurer's re- membrancer, and first-fruits process, for each, the said apposals - - - - -	0	8	0

D D 3

Of

	£.	s.	d.
Of every sheriff of a city, &c. on each of the said two apposals	0	4	0
Of every sheriff of a county sworn to his accompt in court, or elsewhere, and on his apposal on the pipe process before the curfitor-baron	0	18	6
Of every sheriff of a city, &c. on the like apposal	0	4	0
Of every sheriff of a county at his casting out of court, or finishing his accompt	0	8	0
<i>London, Middlesex, and Yorkshire to pay double.</i>			

Fees to be taken by the Court-keeper of his Majesty's Court of Exchequer.

	£.	s.	d.
OF every high-sheriff when he enters on recognizance in the Exchequer	0	2	0
Of every sheriff of a county-town to answer upon his two apposals on the king's remembrancer, treasurer's remembrancer, and first-fruits process, for each of the said apposals	0	2	0
Of every sheriff of a city, &c. on each of the said two apposals	0	1	0
Of every sheriff of a county sworn to his accompt in court, or elsewhere, and on his apposal upon the pipe process, before the curfitor-baron	0	3	0
Of every sheriff of a city, &c. on the like apposal	0	1	0
Of every sheriff of a county upon his apposal on the summons of green wax before the foreign apposer, and clerk of the estreats	0	2	0
If apposed out of term	0	2	6
Of every sheriff of a city, &c. on the like apposal	0	1	0
			Of

£. s. d.

Of every sheriff of a county, &c. on his
 casting out of court, or finishing his
 accompts - - - - - 0 2 0
London, Middlesex, and York, to pay double.

*Fees to be received by the Messenger of the said Court,
 viz.*

£. s. d.

OF every sheriff of a county sworn
 to answer upon his two appofals on
 the king's remembrancer, treasurer's
 remembrancer, and first-fruits process,
 for each of the said appofals - 0 6 8
 Of every sheriff of a city for each of the
 said two appofals - - - 0 3 4
London, Middlesex, and York, to pay double.

Fees to be received by the Tipstaff in the said Court.

£. s. d.

OF every high-sheriff when he enters
 on recognizance in the exchequer 0 2 0
 Of every sheriff of a county sworn to an-
 swer upon his two appofals upon the
 king's remembrancer, treasurer's re-
 membrancer, and first fruits process,
 for each of the said appofals - 0 2 0
 Of every sheriff of a city, &c. sworn
 to answer the like appofals - 0 1 0
 Of every sheriff of a county sworn to
 his accompt in court, or elsewhere, and
 on his appofal on the pipe process be-
 fore the curfitor-baron - - 0 3 0
 Of every sheriff of a city, &c. on his
 appofal on the pipe process before the
 curfitor-baron - - - 0 1 0
 Of every sheriff of a county at his cast-
 ing out of court, and finishing his ac-
 compt - - - - - 0 2 0
London, Middlesex, and York, to pay double.

Fees and Allowances to be paid to the Auditors of the Exchequer, for making up and passing the under-mentioned Sheriffs' Accompts.

	£.	s.	d.
FOR inrolling a sheriff's patent, filing the several certificates, drawing and ingrossing the accompt, and for the <i>Quietus</i> of the sheriff of <i>Cheshire</i> and <i>Lancashire</i> , the fees for each county to be - - -	20	0	0
For the county-palatine of <i>Durham</i> , according to ancient custom - -	9	6	8
For casting out of sheriffs in open court, except <i>London</i> , and <i>Middlesex</i> , <i>York</i> and <i>Lincoln</i> , each county - -	0	10	0
For <i>London</i> , <i>Middlesex</i> , <i>York</i> , and <i>Lincoln</i> , each county - -	1	0	0

Fees to be paid by the Sheriffs of Wales to the Auditor of Wales and Cheshire, for the several Sheriffs of Wales.

	£.	s.	d.
FOR every old seizure charged in the sheriff's accompt - -	0	1	0
For every new seizure charged in the sheriff's accompt - -	0	2	0
For inrolling a sheriff's patent, filing the several certificates, drawing and ingrossing the accompt, and for the <i>Quietus est</i> for each county - -	8	18	4

The Fees due to the Receiver of North and South Wales.

	£.	s.	d.
FOR every sheriff upon passing his accompts at the audit for signing his accompts, and entering in the revenue took - -	2	13	4

For the Sheriffs of Cheshire.

FOR inrolling the sheriff's patent, £. s. d.
 filing the several certificates, drawing
 and ingrossing the accompt, and
 for the *Quietus est* - - - 20 0 0

Quietus.

By stat. 3 Geo. 1. c. 16. s. 1. it is enacted, That the yearly sum of 4000*l.* shall be set apart at the receipt of the exchequer out of such fund as by any act of this session of parliament shall be charged with the said yearly sum, and in such manner as shall be thereby appointed for the uses and purposes hereafter mentioned.

Yearly sum of
4000*l.* set apart
out of the fund
for the purpose
after mentioned.

That there shall be yearly paid out of the monies which shall be so set apart upon the *first* day of *Michaelmas term*, to the several sheriffs for the time being, of the several counties herein after mentioned, the several and respective sums after expressed, to enable them respectively to bear the expences of the respective letters patent for their offices, and to pass their respective accounts, and to obtain their respective *quietuses*: the said yearly sums to be received without any accompt or imprest whatsoever to be set upon them, or any of them, and without paying any fees or charges for the same or any part thereof; that is to say (a),

Yearly allowance to sheriffs
of different
counties.

To the Sheriff of

	£.	s.		£.	s.
Bedford, -	93	6	Rutland, -	69	11
Berks, -	96	0	Salop, -	98	3
Bucks, -	96	0	Somerset, -	112	19
Cambridge and Huntingdon, }	95	10	Southampton, -	101	3
Cheshire, -	62	10	Stafford, -	95	10
Cornwall, -	102	16	Suffolk, -	102	12
Cumberland, -	90	2	Surry, -	90	2
			Sussex, -	90	5

(a) But the sheriff is at much more charge than allowed by the acts in his account, as experience will better inform him.

Devon,

	£.	s.		£.	s.
Devon, -	106	9	Warwick, -	93	10
Dorset, -	101	6	Wilts, -	104	10
Essex, -	108	10	Worcester, -	98	3
Gloucester, -	98	10	York, -	150	0
Hereford, -	94	6	Anglesey, -	30	0
Hertford, -	93	0	Brecon, -	30	0
Kent, -	108	10	Cardigan, -	30	0
Lancaster, -	67	7	Carmarthen, -	30	0
Leicester, -	94	6	Denbigh, -	30	0
Lincoln, -	101	3	Flint, -	30	0
Middlesex, -	119	3	Glamorgan, -	30	0
Monmouth, -	89	3	Merioneth, -	30	0
Norfolk, -	101	15	Montgomery, -	30	0
Northampton, -	96	0	Pembroke, -	30	0
Northumberland, -	91	0	Radnor, -	30	0
Nottingham, -	95	13	Westmorland, -	40	6
Oxon, -	97	7	Derby -	93	19

A *quietus est* to be a sufficient discharge to the sheriff if not questioned within four years after grant thereof, 21 Jac. 1. c. 5.

“ That when any sheriff, &c. within *England* or *Wales*, upon passing their accompts, shall have their *quietus est*, that then such sheriff and sheriffs, their heirs, executors and administrators, lands, tenements, goods and chattels, shall be thereby absolutely discharged of all manner of sums of money by them levied and received, notwithstanding any such pretence, that the same were not accounted for, or other pretence whatsoever, unless such sheriff be called in question, and judgment given against him or them for the same within four years after such account or *quietus est*; and every officer or minister by whom; or by whole default any process shall be sent out contrary to the statute, 21 Jac. 1. c. 5. shall forfeit 40*l.* to the party grieved, with costs to be recovered by action of debt,” &c.

For the returns of the green-wax and other exchequer process, *vide* title *Exchequer Process*.

Fees of Office taken in London and Middlesex.

THE sheriff of *Middlesex*, who are also sheriffs of *London*, is nominated by the citizens thereof; and are, as sheriffs of *London*, at much greater expence in passing through their office, than the sheriff of any other county in *England*; and therefore oblige their under-sheriff of *Middlesex*, out of the fees and profits arising from that office, to advance money from time to time to pay all rewards, payable by the said sheriff, for apprehending highwaymen and other malefactors, which are given by several acts of parliament, and to pay the wages of the justices of peace attending at the several sessions of the peace for the said county of *Middlesex*, and to bear part of the expence of the entertainments at the sessions of gaol delivery, held in the *Old Bailey, London*, for the county of *Middlesex*, which, together with other charges incident to the said office, amounts annually to the sum of 450 *l.* For the dispatch of the business of the county, he keeps his office in *Tost's-Court, Castle-yard, Holborn*, wherein, besides his own attendance, three clerks are daily employed, (*Sundays and holidays excepted*,) they have no salary nor wages, but the allowance out of the fees. And in consideration of his giving security to the said sheriff, in the sum of 12,000 *l.*, to indemnify him from all damages and losses that may happen from the mistake, omission, or misdemeanor of him, his deputies, clerks, or bailiffs, the sheriff hath granted to him all the lawful fees, profits and perquisites belonging to the said office; and in virtue thereof he claims the several fees after mentioned, belonging to the said office (except what may be claimed by the county-clerk).

Sheriffs of London and Middlesex, being at greater expences in passing their office than the sheriff of any other county, oblige their under-sheriff of Middlesex out of fees to advance all rewards, &c.

In consideration all fees granted to the under-sheriff.

£. s. d.

To the charge of passing the sheriffs accounts for *Middlesex*, in the exchequer, by stat. 3 *Geo.* 2.

119 0 0
Of

	£.	s.	d.
Of every bailiff, when admitted into his office, in lieu of all fees due to the sheriff on arrests that may come to his hands, except fees on execution (commonly called poundage) - -	6	10	0
Of every bailiff for his indenture of covenants, and bond to perform the same, and attending the execution thereof.			
For every warrant on a bill of <i>Middlesex</i> , <i>capias</i> , or <i>quo minus</i> - -	0	0	4
For every name more than one	0	0	4
For every warrant on a special <i>capias</i>	0	2	4
For every warrant on a writ of <i>scire facias</i> , extent, <i>elegit</i> , summons against privileged persons, original in real or personal actions, <i>prie</i> , <i>ven. facias</i> out of the <i>exchequer</i> , attachment for the peace out of the crown office, <i>distingas</i> , writ of possession, <i>capias excommunicatum</i> , <i>ne exeat regno</i> , <i>supplicavit</i> , and <i>fi laicus</i> - - -	0	2	4
For taking security on a writ of <i>ne exeat regno</i> , searching the office, and supersedeas to set the defendant at liberty	1	1	0
For taking security on a writ of <i>supplicavit</i> , which rarely happens, searching the office, and for a <i>superfedeas</i> to set the defendant at liberty - -	0	10	6
For the assignment of every bail bond	0	2	4
For the return of the writ -	0	0	8

Fees for Returns of Writs.

For allowing every writ of <i>habeas corpus</i> , <i>cum causa</i> - - -	0	4	8
For the return thereof, if but one writ, to be returned against defendant	0	9	4
For a warrant to the bailiff to conduct the defendant before a judge, or court, as the writ is returned	0	2	4

For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every other writ against the defendant returned thereon	0	4	4
If the defendant is in the gaol, then for a warrant to the keeper to deliver the defendant to the bailiff	0	2	4
For executing a writ of enquiry of damages, and return of the inquisition thereon	0	13	4
To the bailiff for summoning and swearing the jury	0	4	0
For the use of the court-house or room where the writ is executed	0	1	0
To the jurors, each 1s.	0	12	0
For swearing each witness	0	0	4
For taking an inquisition on a <i>capias utlagatum</i> , schedule of the goods seized, and return thereof	0	18	6
To the bailiff for summoning the jury	0	4	0
To the use of the room, where the inquisition is taken	0	1	0
To the jurymen, each 1s.	0	12	0
If more than one finding, for every other	0	3	4
The like on extents	0	18	6
For every finding, if more than one, each	0	3	4
Attending each adjournment	0	10	0
For every summons for a witness to give evidence	0	2	0
For taking an inquisition on a <i>scire fieri</i> inquiry, inquisition, and return thereof	0	18	6
For a <i>nulla bona</i>	0	1	0
If by the bailiff of a liberty	0	2	0
For special returns such as <i>rescue</i> , defendant discharged by <i>superseatas</i> or committed to the <i>Fleet</i> , or <i>king's-bench</i> prison, on a writ of <i>habeas corpus</i>	0	2	4
For the return of <i>scire facias</i> , each name	0	2	0
For the return of <i>nihil</i> , or <i>mortuus</i> on a <i>scire facias</i>	0	1	0
For the return of an escape-warrant	0	2	0
For			

	£.	s.	d.
For the return of a <i>venire facias</i> , summons against privileged persons or original, that the defendant is summoned	0	2	0
For a return of <i>nihil</i> therein	0	1	0
For the return of <i>non inventus</i> on an attachment out of the courts of chancery, exchequer, or dutchy of Lancaster	0	1	0
For the return of <i>non invent.</i> on a proclamation out of the courts of chancery, exchequer, or dutchy of Lancaster	0	2	0
For the allowance of every writ of <i>superfedeas</i> , or <i>restitution</i>	0	2	4
For a warrant thereon to discharge the defendant's body or goods out of custody	0	2	4
For a return of a writ of <i>venire facias juratores</i> , with the panel of 48 freeholders' names thereto annexed	0	2	0
For the return of a writ of <i>distringas</i> , or <i>habeas corpora</i> , with a panel	0	12	0

N. B. The sheriff makes up a panel of 48 *jurymen* for each court in *Westminster-Hall*, every term; but before he can do that, by his officer, he inquires after a competent number of persons' names, taken out of the freeholders' book for that purpose, makes out a warrant to his bailiff to summon them, delivers a panel to the marshal of each chief justice, and chief baron, with the names on paper, attends the court by himself, or deputy, during each sessions of *nisi prius*, and after term, enters the names of each jurymen in an alphabetical register, and gives certificates to each jurymen of his attendance (if required); for all which no fee is claimed or taken.

	£.	s.	d.
Attending the master of the king's-bench-office, prothonotary of the court of common pleas, or the court of exchequer for a special jury	2	2	0
For			

For attending with the jury on a view,
and certifying to the court that the
view has been had, the same fee as is
paid to each jurymen - - - £. s. d.
1 1 0

For attending every trial at bar, or at *nisi*
prius, where a special jury is summon-
ed - - - 1 1 0

N. B. The last mentioned fee is taken by the
under-sheriff, who attends the trial.

For every warrant to a bailiff to summon
a special jury - - - £. s. d.
0 2 4

N. B. The sheriff summonses, impanels, and
returns eight grand juries in the year, at the several
sessions of the peace at *Hicks's Hall*, and attends
by his deputy during all the time of the sessions
there; and also returns eight juries in the year at
the several sessions at the *Old Bailey*, besides party
juries, and juries of matrons; and attendants
there, without any other fee or reward what-
soever.

For a bill of sale of goods on a *fieri fa-*
cias, and an inventory thereunto an-
nexed - - - £. s. d.
0 9 0

For a bill of sale of a term of years - 0 13 4

The like on a *venditioni exponas* - 0 13 4

For allowing a writ in *non ponend. in*
assis. - - - 0 13 4

For charging a defendant in custody with
every other writ than that on which
he is arrested - - - 0 2 4

For a certificate in order for a *superfedeas* 0 2 4

For a certificate that the defendant is in
execution, in order for his discharge
by the late act of parliament - 0 2 4

For his discharge by the rule of court
thereon - - - 0 2 4

For attending with writs and other things
out

	£.	s.	d.
out of the office, to be produced on trial, for each day's attendance -	0	10	6
For the plaintiff's discharge on every writ of <i>feri facias</i> , whereon money has been levied, or on a <i>capias ad satisfaciend.</i> executed on the defendant and on every writ on which the defendant is committed to the gaol. -	0	2	4
For searching the books and files, and a warrant to the keeper of <i>Newgate</i> , to discharge the defendant out of custody	0	2	0

N. B. The defendants are oftner discharged out of *Newgate* without paying any fees than with.

Copies of writs are given, and searches are made for prisoners in *Newgate*, without any fees for the same.

	£.	s.	d.
For every search -	0	0	4
For a short copy of a writ, in order to put in bail by -	0	0	4
For searching for a writ in force, which is never done but upon the undertaking of some attorney, to put in bail thereto	0	1	0
For a copy of all writs, or other things for every sheet of copy wrote -	0	0	6
For a copy of a bill of <i>Middlesex</i> , <i>capias</i> , or <i>quo minus</i> , at length -	0	1	0
For executing and returning a writ of false judgment, or <i>accedas ad cur.</i> -	0	6	8

Fees for executing a writ of *ad quod damnum* cannot well be settled, but must be left to the sheriff and the party, to be adjusted between them, because the inquisition on this writ is always taken on the place where the highway to be inclosed lies; or where the intended fair or market is to be held, which may occasion the sheriff's travelling a considerable journey.

Fees for executing a writ of partition cannot well be settled for the same reason; and a provision is made by statute 8 & 9 *W. 3. c. 31.* for settling the same in case the sheriffs and the parties cannot agree.

£. s. d.

For attending the lord mayor, as conservator of the river *Thames*, making warrants on the writs of *capias*, and summons, and returning the same, and for summoning, impanelling, and returning the grand jury at the first court in every year, the water-bailiff pays - - - 1 1 0

For attending the lord mayor at the second court in every year, and returning the summons and *capias* process, the water-bailiff pays - - - 0 10 6

For summoning, impanelling, and returning the traverse jury, and attending the trials there, which very rarely happens - - - 0 10 6

For returning, summoning, and impanelling a jury, and attending commissioners in a commission out of the exchequer to find debts - - - 0 10 0

For the like on a forcible entry before two juries, which happens but very seldom - - - 0 10 0

For a warrant on a precept for two justices to remove the force after inquisition taken - - - 0 2 4

Customs and Excise.

BY stat. 9 *Geo. 2. c. 35.* reciting, that whereas it hath been found by experience, that the bailiffs and other officers, having the execution of process in the several counties, cities, and liberties of this kingdom, often hold correspondence with the persons guilty of the several illegal practices therein

Sheriffs, mayor &c. on request, in writing of a known sub-circar for the customs or excise, to grant a special warrant for ap-

mentioned,

E E

prehending of-
fenders, on writs
of *capias*, &c.

mentioned, and give them notice when any writ or process issues against them, whereby they escape from justice: For remedy thereof, be it enacted, That where any writ of *capias* shall issue out of any court, directed to any sheriff, mayor, &c. having the execution of any process in any county, city or liberty, against any person who shall be guilty of, or prosecuted for any offence whatsoever, contrary to any of the laws or statutes now in being, relating to his majesty's revenues of customs or excise, every such sheriff, mayor, &c. having execution of process, and their under-sheriffs, &c. and other persons, acting for them in the said office, shall, upon request of any one of the known solicitors for the customs or excise, (such request to be in writing indorsed upon the back of the said process, and signed by such solicitor, with his name and addition of *solicitor for the customs or excise*, as the case shall happen to be,) to grant a special warrant or warrants, to such person or persons as shall be named to them by such solicitor, for the apprehending such offender and offenders, or in default thereof, every such sheriff, mayor, &c. shall be liable to such process of contempt, fines, amerciaments, penalties and forfeitures, as they or any of them, are now by any law, custom or usage, liable to, in case of refusing or neglecting to execute the like process, where the defendant might have been taken thereupon, in the common and usual method of proceeding.

Sheriffs, mayors,
&c. granting
such special war-
rants, saved
harmless.

That every sheriff, mayor, &c. shall be, and they are hereby saved harmless and indemnified against his majesty, his heirs and successors, and against all and every other person and persons whatsoever, of and from all escapes of any person or persons who shall or may be taken by virtue of any such warrants as aforesaid, which shall or may happen from the time of the taking such offender or offenders, till he, she, or they shall be committed to the proper gaol or prison, or offered or rendered to the gaol-keeper, or other person having

having charge of such gaol or prison, (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and give a receipt for his and their body and bodies,) and of and from all actions, prosecutions, process of contempt, and other proceedings whatsoever, for or by reason of any such escape. *s. 33.*

By the stat. 7 Geo. 3. c. 29. it is enacted, That the stat. 29 Eliz. c. 4. with respect to poundage on executions, shall not extend to allow any sheriff, employed in the execution of process, any poundage for taking the body of any person in execution upon any process, at the suit of any sheriff, or other officer or minister of the crown, upon any bail-bond entered into for the appearance of any person prosecuted, either for any duties due or payable to his majesty, his heirs or successors, or for any penalty inflicted by any act of parliament, made or to be made for the preventing the clandestine running or receiving any customable or prohibited goods; or in any case whatsoever, where the sheriff or officer executing such process would not be entitled to poundage, if the proceedings were, or had been carried on directly in the name of the crown. *Vide title Poundage, for cases on this clause.*

Poundage, cases where sheriffs, &c. are declared not entitled to poundage by virtue of 29 Eliz. c. 4.

False Return of Writ.

I Have in the outset of this work said, that the sheriff is an officer who ought to be favoured in law, before any private person, and of course ought to be protected by the courts of justice in doing his duty. But if he is guilty of unreasonable delay, or making an untrue return of his writ to the court from whence it issued, he is no farther protected, but must make a recompence to the party injured, *in an action on the case.*

Sheriff, though protected in doing execution, yet if he delay or return falsely, liable to make satisfaction.

To proceed regularly on this head, I shall first state the statute 13 Ed. 1. c. 39. which ordains,

EE 2

That

How writs shall
be delivered to
sheriffs to be ex-
ecuted.

St. 2 Ed. 3. 5.
Regist. f. 86.
Rast. pl. fo. 582.
626.

3 Bulstr. 200.
2 Inst. 400.
1 Roll. 440.
4 Co. 65. b.
2 Inst. 451.

29 Ass. pl. 58.

St. 51 H. 3. 3.
St. 3 Ed. 1. 17.
F. N. B. f. 43.

The sheriff re-
turneth a liberty
where none is.
2 Inst. 452.

Non omittas
propter aliquam
libertatem.

That such as do fear the malice of sheriffs, shall deliver their writs original and judicial in the open county, or in the county where the collection of the king's money is; and may take of the sheriff or under-sheriff, being present, a bill, wherein the names of the demandants and tenants mentioned in the writ shall be contained; and at the request of him that delivered the writ, the seal of the sheriff or under-sheriff shall be put to the bill for a testimony, and mention shall be made of the day of the deliverance of the writ. And if the sheriff or under-sheriff will not put his seal to the bill, the witness of knights and other credible persons being in presence shall be taken, that put their seals to such bill. And if the sheriff will not return writs delivered unto him, and complaint thereof be made to the justices, a writ judicial shall go unto the justices assigned to take assizes, that they shall inquire by such as were present at the deliverance of the writ to the sheriff, if they knew of the deliverance, and an inquest shall be returned. And if it be found by the inquest, that the writ was delivered to him, damages shall be awarded to the plaintiff or demandant; having respect to the quality and quantity of the action, and to the peril that might have come to him by reason of the delay sustained: and by this means there shall be remedy when the sheriff returneth that he came too late, whereby he could not execute the king's commandment. Oftentimes also pleas be delayed, by reason that the sheriff returneth, that he hath commanded the bailiffs of some liberty which did nothing therein, and nameth liberties that never had the return of writs; whereupon our lord the king hath ordained, That the treasurer and barons of the exchequer shall deliver to the justices, in a roll, all the liberties in all shires that have return of writs. And if the sheriff answer, that he hath made return to a bailiff of another liberty than is contained in the said roll, the sheriff shall be

be forthwith punished as a disseisor of our lord the king and his crown. And, if peradventure he return, that he hath delivered the writ to a bailiff of some liberty, that indeed hath return, the sheriff shall be commanded, that he will not spare for the aforesaid liberty, but shall execute the king's precept; and that he do command the bailiffs, to wit, to whom he returned the writ, that they be ready at a day contained in the writ, to answer why they did not execute the king's precept. And if they come at the day, and acquit themselves, that no return was made to them, the sheriff shall be forthwith condemned to the lord of the same liberty, and likewise to the party grieved by the delay, for to render damages. And if the bailiffs come not in at the day, or do come, and do not acquit themselves in manner aforesaid, in every judicial writ, so long as the plea hangeth, the sheriff shall be commanded, that he shall not spare the liberty, &c. Many times also, sheriffs make false returns as touching these articles, *quod de exitibus*, &c. returning sometime, and lying, that there be no issues, sometime that there are small issues, when they may return great, and sometime do make mention of no issues: Wherefore it is ordained, That if the plaintiff demand hearing of the sheriff's return, it shall be granted him: And if he offer to aver, that the sheriff might have returned greater issues unto the king, he shall have a writ judicial unto the justices assigned to take assizes, that they shall inquire in presence of the sheriff (if he will be there) of what and how great issues the sheriff might have made return from the day of the writ purchased, unto the day contained in the writ. And when the inquest is returned, if he have not afore answered for the whole, he shall be charged with overplus by estreats of the justices delivered at the exchequer, and nevertheless, shall be grievously amerced for the concealment. And let the sheriff know, that rents, corn in the grange, and all moveables, (except horse, harness, and household-

F. N. B. f. 43.
F. N. B. f. 62. F.
74. A.
Regist. f. 82.
Rast. pla. f. 439.

2 Inst. 453

The sheriff's
default in re-
turning of issues.
F. N. B. f. 43.
Rast. pl. fo. 383.
1 Roll. 336.
2 Inst. 453.

What shall be
accounted issues.

The sheriff re-
turneth, that
there was distur-
bance of execu-
tion of process.
St. 52 H. 3. 3.
St. 3 Ed. 1. 17.
Regist. f. 83.
Fitz. Execut.
147.

stuff,) be contained within the name of issues. And the king hath commanded, That sheriffs shall be punished by the justices, once or twice, (if need be,) for such false returns. And if they offend the third time, none shall have to do therewith but the king. They make also many times false answers, returning that they could not execute the king's precept, for the resistance of some great man: Wherefore, let the sheriffs beware from henceforth; for such manner of answers redound much to the dishonour of the king. And as soon as his bailiffs do testify, that they found such resistance, forthwith all things set apart, (taking with him the power of the shire,) he shall go in proper person to do execution: And if he find his under-bailiffs false, he shall punish them by imprisonment, so that others, by their example, may be reformed. And if he do find them true, he shall punish the resisters by imprisonment, from whence they shall not be delivered without the king's special commandment. And if percase the sheriff, when he cometh, do find resistance, he shall certify to the court the names of the resisters, aiders, consenters, commanders, and favourers, and by a writ judicial, they shall be attached by their bodies to appear at the king's court: And if they be convicted of such resistance, they shall be punished at the king's pleasure; neither shall any officer of the king meddle in assigning the punishment, for the king hath reserved it specially to himself, because that resisters have been reputed disturbers of his peace and of his realm. *Stat. 28 Ed. 1. 16.*

An indenture
shall be made be-
tween the sheriff
and bailiff of
franchise of
every return,

And because it is many times complained in the king's court upon returns, that bailiffs of franchises (having full power to return the king's writs) have delivered to sheriffs, that have been after changed, and otherwise returned into the king's court, to the great damage of some of the parties, and the delay of the right: It is agreed, that of returns which hereafter shall be delivered

to the sheriffs by bailiffs of such franchises, an indenture shall be made between the bailiff of the franchise by his proper name, and the sheriff by his proper name. And if any sheriff change the return so delivered to him by indenture, and be thereof convicted at the suit of the lord of the franchise, of whom he received the return, if the lord have had any damage, or if his franchise be imblemished, and at the suit of the party that hath sustained loss through that occasion, he shall be punished by the king for his false return, and shall yield unto the lord and to the party double damages. Also it is agreed, that sheriffs and other bailiffs that receive the king's writs returnable in his court, shall put their own names with the returns, so that the court may know of whom they took such returns, if need be. And if any sheriff, or other bailiff, leave out his name in his returns, he shall be grievously amerced to the king's use. 12 Ed. 2. c. 5.

1 Bulstr. 73.

Sheriffs and bailiffs shall set their names to their returns. Bro. Ret. 82.

If the sheriff does not execute a writ to him, or if he wilfully makes a false return thereof; in both these cases the party aggrieved shall have an action on the case for damages, to be assessed by a jury. Moor, 431. 11 Rep. 99.

False return.

For a false return an action upon the case lies against a sheriff by the common law. 2 Inst. 452. 4 Mod. 404.

So if a mayor or bailiff make a false return to any writ, an action on the case will lie against them.

Case lies for a false return.

If the sheriff returns a *cepi corpus*, and *paratum habeo* or *languidus*, where the defendant is at large, without any bail taken, he is not aided by the statute, but an action lies against him for a false return. 1 Roll. Abr. 807.

If return cepi corpus or languidus, and deus defendant at large, liable to this action.

If the return upon the face of it be good, but the matter of it false, an action upon the case lies for the party injured, against the persons making such false return, and where the return is made by several, the action may be either joint or several,

If matter false.

it being founded upon a tort. *Carth. 171. Bull. Nisi Prius, 198.*

The truth of a return not to be tried on motion.

The court will not try the truth of a return on a motion to set aside proceedings, but will leave the party to his action. *Barr v. Satchwell, 2 Str. 813.*

When action lies for a false return.

If the sheriff returns *non est inventus*, where he has or might have taken the body, he is liable to an action for a false return; and he is liable to a similar action, if he return *cepi corpus et paratum habeo* where he has taken the defendant, and let him go at large without bail; he is liable to an action, if the defendant be not in custody, or bail above be not put in and perfected or surrender made in due time. *Gilb. C. P. 22. 2 Mod. 178.* But when the sheriff has taken a bail-bond, he is not liable to this action upon the return of *cepi corpus et paratum habeo*. *3 Salk. 314.*

When not.

This action is given by statute 28 Ed. 1. c. 16.

It appears that this action is given to the plaintiff by the statute 28 E. 1. c. 16. enacting, that if any sheriff shall make a false return of any writ, (whereby right is deferred,) the offenders shall yield damages to the party grieved.

If he return mand. bail. and no liberty.

And if the sheriff return *mandavi ballivo libertatis*, where there is no liberty, an action lies. *Kitch. Return. 44.* and so if he return too small issues. *19 H. 6. fol. 8.*

Writ delivered to the under-sheriff in company of the high sheriff, sheriff returned not found, action brought against him.

The writ was delivered to the under-sheriff by the plaintiff, his creditor being then and there present, and in the sight and company of the high-sheriff, and yet he, and not the under-sheriff returned *non est inventus*; and thereupon the action was brought against him, and held good. For he is the proper officer to the court, and not the under-sheriff; and every neglect or fraud of the under-sheriff, in executing the office, is punishable against the high-sheriff by fine, &c. but he is not to be committed for the act of his under-sheriff. *3 Nels. Abr. 237, 238. pl. 6. 1 Mod. 33. 57, 58.*

Writ to sheriff who made warrant to the bailiff.

Upon writ to the sheriff, he first made warrant to the bailiff of the liberty, and after to his own bailiff,

bailiff, who arrested the party, and suffered him to escape; and then the sheriff returned *mandavi balivo*. Upon affidavit of the fact, the sheriff was ordered to attend. And it was agreed, that an action lay against the sheriff for a false return. 12 Mod. 311. *Steward v. Floyd*.

If the sheriff will return *liberavi parte*, where he refuses to accept, action will lie against him for a false return. 12 Mod. 361.

The writ of *capias in witbernam* is no writ of execution; and we can have no action for a false return against the sheriff; 1st, because the *elongat*. is grounded upon an inquisition; 2dly, if he cannot replevy the party, he can make no other return: for he is not to take him to falsify the writ. 12 Mod. 444. *Moore v. Watts*.

No action for a false return will lie against the sheriff for returning an *elongat*. in any case where he cannot have sight of the thing to be replevied, because he can make no other return; but if such an action could, the taking an inquisition would not have prevented it; for it is not a sheriff's taking an inquisition, where it does not lie, will protect him from an action. 12 Mod. 426. *Moore v. Watts*, 2 Salk. 581. S. C.

Upon an arrest, sheriff took bail and returned *cepi corpus*, plaintiff brought an action for a false return, but adjudged a good return, because by statute 23 H. 6. he is compelled to take bail, and the statute has made no alteration of the return. 2 Sid. 28 *Williams v. Tempest et al.*

An action on the case lies against a sheriff for making other return than is returned to him by a liberty or bailiff of a franchise, who had *retorna brevium*. 1 Roll. Rep. 119.

And if a sheriff return the bailiff's answer, and it is untrue, an action lies against the bailiff, and not against the sheriff. For the sheriff ought to accept the return of the bailiff, and not examine the reality of it (if it be sufficient in law). 1 Roll. Ab. 98, 99. *Cro. Eliz.* 512.

Writ of liberty; and after warrant to his own bailiff, then sheriff returned *mandavi ballivo*, action lies for false return. Sheriff returns *liberavi parte*; where he refuses to accept, action lies.

Capias in *witbernam*, no execution; and no action lies for a false return.

No action lies for return of *elongat*, where the sheriff cannot have sight of the thing.

On arrest, sheriff took bail and returned *cepi*, plaintiff brought his action for false return, adjudged good.

Case lies against a sheriff, for making other return than what he received.

If sheriff return the bailiff's answer, which is untrue, action lies against the bailiff.

The

The sheriff is bound to execute the process of the law in the most effectual way: if a person against whom a party had a writ, did not abscond, but continued in the daily exercise of his usual occupation, appearing publicly as usual, was visible to every person that came to him about business, and the bailiff neglected to arrest him, and returned *non est inventus*, such was unquestionably a *false return*. *Lord Kenyon. Esp. N. P. c. 475.*

The declaration.

In an action for a false return the declaration should state, that plaintiff had good cause of action against the defendant in the original action, by stating that he was indebted to him for money lent, &c. and he is bound to prove such statement. *Ibid.*

If sheriff levy the whole, and return part.

If the sheriff levy the *whole* on a *fi. fa.* and only return *part* levied, this action lies for a *false return*. *Salk. 12.*

Venue.

The venue is to be laid where the return is filed in *Middlesex*, or in the county where it is made. *Bull. N. P. 63.*

If there is a recovery for a false return, the goods remain in the party.

Where the sheriff returns *nulla bona*, and there is a recovery against him for his false return, that vests no property of the goods in him, but they remain in the party, and are liable to any subsequent execution for his debt. *2 Vern. 239.*

False Imprisonment.

False imprisonment.

IT may be proper to consider the violation of the right of personal liberty. This is effected by the injury of false imprisonment, for which the law has not only decreed a punishment, as a heinous public crime, but has also given a private reparation to the party; as well by removing the actual confinement for the present, as, after it is over, by subjecting the wrong-doer to a civil action, on account of the damage sustained by the loss of time and liberty.

To constitute the injury there

To constitute the injury, there are two points requisite. 1. *The detention of the person*; and, 2. *the*

the unlawfulness of such detention. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets. 2 Inst. 289. Finch. 202.

are two points required. Every confinement of the person is an imprisonment.

Unlawful or false imprisonment, consists in such confinement or detention *without sufficient authority*: which authority may arise either from process from the courts of justice, or from some warrant from a legal officer having power to commit, under his hand and seal, and expressing the cause of such commitment. Ibid. 46. It may arise by executing a lawful warrant or process at an unlawful time, as on a Sunday. Salk. 78.

What unlawful or false imprisonment consists of.

May arise by executing a lawful warrant, &c.

That for all arrests made without *lawful authority, trespass and false imprisonment* will lie as if there be *no writ*. Com. Digest.

If a man be arrested under a process which was irregularly issued, this is a false imprisonment in the party at whose suit it was issued; for it was incumbent on him to take care that the process was regularly issued. 2 Jon. 214. 1 Vent. 220. Str. 509.

If arrest by an irregular process, false imprisonment in the party.

But if a man be arrested under a process which was *erroneously* issued, this is *not* a false imprisonment; because the issuing thereof was owing to the mistake of an officer of the court, and not to the fault or neglect of the party at whose suit it was issued. Str. 509. Phillips and Biron.

But if erroneously issued not.

The officer is not in this case liable to an action of trespass; for that it would be hard to punish a man who has done nothing more than obey the process of a court to which he owed obedience. Cro. Jac. 3. 2 Leon. 89. 4 Leon. 78. 2 Mod. 196. Str. 509.

Officer not liable tho' irregular process.

If a sheriff, to whom *no writ* has been directed for the arresting of *A.*, make out a warrant to a bailiff to arrest *A.*, and *A.* be thereupon arrested, it is a false imprisonment in the sheriff and the bailiff, because there is no authority for the arrest. 1 Jones, 375.

If sheriff make warrant without writ, false imprisonment.

But

But if a writ has been directed to a sheriff for arresting A., and he makes out a warrant under which A. is arrested, before writ delivered, no false imprisonment.

Altho' arrest is good, yet warrant not lawful.

An action of false imprisonment lies against the sheriff for an arrest made by his bailiff after the return of the writ.

But if a writ has been directed to a sheriff for the arresting of A., and he makes out a warrant to a bailiff, under which A. is arrested *before the writ is delivered to the sheriff*, this is no false imprisonment; for the writ is in this case an authority for all that has been done, notwithstanding it was *not* delivered to the sheriff before the arrest. 2 Lev. 19. 3 Lev. 93.

Although however the arrest upon such warrant is good, the granting thereof by a sheriff, or his deputy, is not lawful. 2 Wils. 47.

The sheriff is liable for the misconduct of his officers, while acting under colour of an authority derived under him, and therefore he is liable to this action for an arrest made by his bailiff after the return of the writ; and so is the gaoler who receives the defendant.

The true ground upon which the sheriff is held to be liable is, that he is thought to commit the execution of the writ to another person; and if he has not executed it properly the *sheriff* is liable. The officer is the servant of the sheriff, and executing process directed to him; if therefore he acts *irregularly*, the law subjects the sheriff, from whom he derives that authority. The *gaoler* is the officer of the sheriff, and therefore the *sheriff* is liable for his acts. *Eyre C. J. Parrott v. Mumford, Esp. Cas. N. P. 585. Mansf. Ass.*

If A. arrested instead of B., false imprisonment.

If A. be arrested instead of B. whom the sheriff had a writ to arrest, this, although B. be very much like A. in the face, is a false imprisonment; for the sheriff is at his peril to take care, that he do not arrest any person except him against whom the writ issued. *Bro. Off. pl. 8. 2 Roll. Abr. 552. O. pl. 5. 1 Bulst. 149.*

If A. tell an officer that his name is B., and is arrested, yet false imprisonment.

Nay, it has been holden, that if A. tell an officer, who has a warrant to arrest B., that his name is B., and thereupon the officer arrest A., this is a false imprisonment; for the sheriff is at his peril to take care that he do not arrest any person except him against whom the writ issued. *Moor, 457. Hardr.*

323.; yet it seems he causes himself to be arrested, therefore *quære* as to damages.

If a *special bailiff* do not shew his warrant, a fight thereof being demanded at the time of arresting a man, the arrest is a false imprisonment. *Ers. Faux Impr. pl. 23. 9 Rep. 69.* But it is otherwise if arrested by a *known bailiff*.

But if a warrant be directed to two or more jointly or severally, an arrest by any one of these is certainly not a false imprisonment. *1 Inst. 181.*

If a stranger assist a bailiff in confining a person who has been arrested by the bailiff, this is not a false imprisonment. *Bro. Tresp. pl. 402. 2 Roll. Abr. 561. F. pl. 2. Cro. Car. 446.*

If a stranger, after a man has been arrested, confine him at the request of the bailiff who arrested him, this is not a false imprisonment. *2 Roll. Abr. 561. F. pl. 2. Cro. Car. 446.*

If a person against whom an escape warrant has issued, be arrested by the mob, and by them delivered to the sheriff, and the sheriff detain him, this is false imprisonment; for, as he was not arrested by a proper officer, the arrest was illegal. *6 Mod. 154. Rich and Doughty.*

An unlawful detaining of a man does, although the first arrest was lawful, amount to a new arrest, and consequently is a false imprisonment. *Cro. Car. 379.*

If a plaintiff, by an order in writing, direct a sheriff to discharge a man, whom he has arrested by virtue of a *capias* or an *exigent* at the suit of the plaintiff, and the sheriff do afterwards detain the man, this is a false imprisonment. *3 Bulstr. 97, 98. Wythers and Henley. Cro. Car. 379.* So after a *superseas* delivered to him, and party not discharged. *Fitz. N. B. 236. Cro. Jac. 379. 1 Roll. Rep. 141. 3 Bulstr. 97.*

If the order of a court be to carry a man to a certain prison, the confining him in any other place is a false imprisonment. *Salk. 408. Swynstead and Lyddal. Skin. 664.*

If special bailiff do not shew the warrant on demand, false imprisonment.

If warrant to two, and arrest by one, no false imprisonment.

If a stranger assist officer.

If stranger confine after arrest made.

If on escape warrant he be arrested by the mob, and they deliver to the sheriff and he detains, false imprisonment.

Unlawful detainer, altho' arrest lawful, amounts to a new arrest and false imprisonment.

If plaintiff by order direct sheriff to discharge a man on *capias*, &c. he must do it.

So after *superseas* he must discharge.

If the order of court is to take to a certain gaol, confining in another is false imprisonment.

If

If a name of a bailiff be inserted in the warrant, it is bad.

If a warrant on a *capias* has two bailiffs' names inserted by the under-sheriff, and a blank left for a third, is sealed, and sent to plaintiff's attorney, who inserts another bailiff's name in the blank of it, it is bad, and false imprisonment lies against the bailiff who makes the arrest. *Burslem v. Fern*, 2 *Wils.* 47.

Will not lie for an arrest of the person, tho' he be protected as a suitor.

This action will not lie for a person arrested by legal process, though he be returning from the court of common pleas, where he had been attending his own cause; for the process is not void. *Cameron v. Lightfoot*, 2 *Black. Rep.* 1190.

This action will not lie against sheriff, &c. for arresting a certificated bankrupt, &c.

It will not lie against the sheriff or his officer for arresting a certificated bankrupt, a peer, a discharged insolvent, or a person who took the advantage of the statute of 20 *Geo. 3. c. 64.* *Tarleton v. Fisher*, *Doug.* 671.

Justification.

If a man be enabled to do an act by a warrant or other authority regularly, he ought to shew it specially. *Co. Lit.* 283. a. 4 *Mod.* 378.

If action be brought against bailiff only.

If an action be brought against the bailiff only, he need not in justification alledge the judgment, only the writ to the sheriff, and warrant upon it. 1 *Salk.* 409. 3 *Lew.* 20.

Mesne process.

So if by mesne process out of a superior court, it is sufficient to alledge the writ to the sheriff, and warrant upon it. 5 *Com. Dig.* 358.

If officer joins in plea with defendant.

If the officer joins in the same plea with the defendant, for whom the warrant is no justification, he forfeits the benefit of it. *Phillips v. Biron*, 1 *Str.* 509. 2 *Str.* 993. 2 *Lut.* 935.

If sheriff or officer justify.

If the sheriff or officer himself, to whom process is directed, justifies an imprisonment by force of such process, he must shew the writ to be returned. 2 *Roll.* 563. l. 10. 20. *Salk.* 409. But the bailiff of a franchise need not. 2 *Roll.* 563. l. 25. Nor a bailiff who has a warrant from the sheriff, or the party, or any other who acts in aid of him. 2 *Roll.* 562. 1 *Salk.* 409. *Cro. Car.* 446. *Jon.* 378.

Where

Where an officer and another join in the same justification, if it be not sufficient for the officer, neither is it for the other; and wherever a principal officer justifies an imprisonment under a writ, which he ought to return, (for all mesne process ought to be returned,) he must shew that the writ was returned, for he is commanded to return the writ, and shall not be protected by it, unless he shews that he paid a due and full obedience in acting under it. *Salk. 409. Freeman v. Blewitt. Lord Ray. 305.*; but it is otherwise in the case of a subordinate officer, such as bailiff, for he is only to execute the sheriff's warrant, for it is not in his power to shew the writ. *Cro. Car. 446. Str. 1184. 993.* If the action be brought against him who was plaintiff, he cannot justify by virtue of an execution, unless he likewise shew there is a judgment, for the judgment may be reversed, and it ought to be at his peril, that he takes out execution afterwards: But it is enough for the sheriff to shew a writ, and if any one come in aid of the officer at his request, he may justify as the officer may do, but such request is traversable. *Salk. 409. Bull. Nisi Prius, 23. Salk. 409. Britton v. Cole.*

Upon a *fi. fa.* the sheriff must produce an office copy of the judgment on not guilty. *1 Lord Ray. 733.* on which a *fi. fa.* issued. And so held against sheriff's officers, in trespass on not guilty pleaded. *5 Burr. 2632.*

An attorney fills up the sheriff's warrant on a *capias ad respondendum*, after the under-sheriff had signed and sealed it, who sent it to him with a blank left to put in another officer's name. The warrant sent was directed to *Jordan*, and the attorney put in *the present defendant's name*, as a special bailiff, who arrested the present plaintiff, and took him to gaol for want of bail. Now, on trespass and false imprisonment being brought, the defendant justified under the sheriff's warrant, and plaintiff replies, and traverses that such warrant was directed to the gaoler *Jordan*, and the present defendant;

What is a justification to an action of false imprisonment, against sheriff or his officers.

If action against the plaintiff.

Enough for the sheriff to shew a writ, &c.

Must produce an office copy of the judgment.

An attorney fills up the sheriff's warrant on a *capias ad respondendum*, after it is signed, sealed, and sent to him with a blank; this is bad.

defendant: issue was taken on the traverse; and it was held, that the warrant was bad, and therefore judgment was for the plaintiff. And the court said—We have no doubt but this practice ought to be condemned; and although we do not punish attornies for it by granting attachments, yet we constantly discharge the party arrested by such warrant out of custody. Such warrant is always held to be illegal. And if *Burslem*, the present plaintiff, had killed *Fern* in resisting him, it would not have been murder, because *Fern* had no legal warrant to arrest him. And a parcel of sailors who were tried before Mr. Justice *Bathurst*, for killing a bailiff who had such a warrant as the present for arresting one of them, were acquitted of murder. *Burslem v. Fern*, 2 *Wils.* 47. C. B.

Trespass.

THE high-sheriff is answerable in damages for the trespasses committed by his officers, in the execution of warrants; the law looking upon the sheriff, and all his officers, as one person: he is to look to his officers, that they do their duty; for if they transgress, he is answerable to the party injured by such transgression, and his officers are answerable over to him. 2 *Keb.* 352. In point, see 2 *Black. Rep.* 317. *Saunderson v. Baker*.

If sheriff take the goods of A. instead of B., trespass lies.

If bailiff takes goods of a stranger, trespass lies against him.

If sheriff takes a furnace,

Trespass will lie against the sheriff, if his officer take the goods of A. on a *fi. fa.* against those of B. *Aikworth v. Kempe*, *Dougl.* 40. 2 *Black Rep.* 832. S. P.

If the bailiff of a franchise take the goods of a stranger in execution, trespass lies against him, and not the sheriff. 2 *Roll.* 522. l. 40.

If sheriff takes a furnace, &c. fixed to a freehold, trespass lies, but not against the party, though it is delivered to him. 2 *Roll.* 556. l. 50. *Gro. Car. Eliz.* 374.

If

If a sheriff who comes to replevy the beast of *J. S.* which is impounded in the close of *J. N.* break down the fences of the close, and enter that way, when he might have went through the gate, trespass lies. *2 Roll. Abr. 552.*

But if by reason of the threat of *J. N.* the sheriff fear his life will be in danger if he go through the gate, and in consequence of this, he break down the fence of the close, and enter that way, this action does not lie. *Ibid.*

On foreign attachment of the goods, the officer cannot legally continue in possession of the defendant's house, or keep the goods therein for a long and unreasonable time; but must remove them to a place of safe custody, else he is a trespasser *ab initio*. *Reed v. Harrison, 2 Black. Rep. 1218.*

In all cases, where the execution of a judgment on which the demand is of a thing certain, if the sheriff do this thing, he is not any disseisor. But where the execution is in the generality, without mentioning of any thing in particular, there the sheriff ought to make execution of the right thing at his own peril, otherwise he shall be a disseisor; *2 Vin. 292.* for he is bound to take notice of it, and he had not any warrant from the court to make execution of any but the right thing. *Floyd v. Bethel.*

Where the subject-matter of any suit is not within the jurisdiction of the court, applied to for redress, every thing done is absolutely void, and the officer executing the process, is a trespasser. *Hard. 480.*

But where the subject-matter is within the jurisdiction of the court, but the want of jurisdiction is to the person or place, unless the want of jurisdiction appears in the process to the officer who executes it, he is not a trespasser. *2 Co. 76. a.*

If a writ of execution is delivered to the sheriff, and the defendant becomes a bankrupt before it is executed, the execution is thereby superseded, and the goods not bound by the delivery, for the property ceases to be in the bankrupt from the time of the act of bankruptcy.

If sheriff in replevy break fences, where there is a gate, trespass lies.

But if threats are used against sheriff, otherwise.

Officer on foreign attachment ought not to keep the goods an unreasonable time.

The sheriff is to make execution of the right thing at his peril, for he is bound to take notice.

When officer a trespasser.

When not.

If execution delivered, and defendant becomes bankrupt before executed, it is superseded.

Sheriff not made
a trespasser by
relation.

bankruptcy committed : And in such case the sheriff shall not be made a trespasser by relation, for any subsequent disposal of them ; though he would be subject to an action of trover.

But trover will
lie against the
sheriff.

For where the goods of a trader were taken in execution, after an act of bankruptcy committed by the defendant, who was sheriff, but before the sale the commission was sued out, and a provisional assignment made, of which he had notice, but notwithstanding he sold the goods ; this action was held not to lie, though trover might ; for the taking was rightful and legal, and the conversion only unlawful, he having had notice that the property was changed. *Smith v. Miller*, 1 Term Rep. 475.

If sheriff break
the house to ex-
ecute process.

If the sheriff or his officers break the house of any person to execute process of *fi. fa.* against the goods, or *capias* against the person, at the suit of a subject, he is a trespasser and liable to this action. 5 Co. 91. *Semayne's case*.

Only confined to
the person of the
owner or his
goods, not to a
stranger.

But this privilege only is confined to the person or goods of the owner of the house, or such as are brought there, without fraud or covin, and therefore shall not protect the person or goods of any other, which are brought there to prevent a lawful execution. *Ibid.*

When sheriff
may maintain
this action.

If a sheriff take goods under a *fi. fa.* and they be forcibly taken away from him, the sheriff may maintain trespass, although he has only a special property in them ; *Tyrrell v. Task*, Cro. Eliz. 639. ; or trover, 1 Lev. 282.

When officers
not trespassers by
relation.

Officers doing their duty shall not be trespassers by relation if the first taking were lawful. *Smith v. Milles*, 1 Term Rep. 480.

When may
waive the tres-
pass and bring
action for the
amount of the
goods sold.

In case goods be taken in execution, which are not the property of the persons against whom an execution is taken out ; the owner may waive the trespass ; and bring his action for the amount of the money the goods sold for. *Feltham v. Terry*, Cow. Rep. 419.

Bailiffs may
justify under le-

In trespass against bailiffs for taking goods, they may justify under a sufficient legal process if they had

had it in fact at the time, although they declared then that they entered for another cause. *Crowther v. Ramsbottom*, 7 Term Rep. 654. 12 Mod. 386. *S. P.* gal process, that they declared they entered for another cause.

The landlord of a ready-furnished house brought trespass against the sheriff for seizing the furniture under an execution against the tenant, the court held the action *not* to be maintainable. 4 Term Rep. 489. *Ward v. Macauley*. 7 Term Rep. 9. as to trover. Ready-furnished house.

Justification.

In trespass against the sheriff, it is a sufficient justification for him that he shews his writ, without shewing a judgment: So it is in case of his *bailiff*, with this difference, that the sheriff must shew the writ was returned, if returnable; but the bailiff need not, because it is not in his power. *Salk.* 408. *Britton v. Cole*. 3 Lev. 20.

If one comes in aid of an officer at his request, he may justify as the officer may do; but such request or command is traversable. *Salk.* 409.

Evidence.

In actions against the sheriff or his officers for *Tortia.* *tortiously* taking of goods in execution, where the plaintiff is defendant in the original action, a copy of the judgment need not be given in evidence. *Lord Ray.* 733. *Lake v. Billers*.

But where the action is by a *stranger*, whose goods have been wrongfully taken by the sheriff, under a *fi. fa.* or other execution, if sued against another person, the sheriff, or his officers, in justifying under the writ, is obliged to produce a copy of the judgment upon which the *fi. fa.* issued. *Martin v. Podger*, 5 Burr. 2631. If by a stranger.

Trover.

THIS action is maintainable by the assignees of a bankrupt against a *sheriff*, who sells the goods of a bankrupt (before taken by him in execution under a *fi. fa.*) after assignment. For after the assignment, they became the property of the assignees from the time of the bankruptcy by relation. But this relation shall not make him a trespasser or wrong-doer, where the original taking of the goods was prior to the assignment and lawful. For in this action, the plaintiff waives the trespass; and relies upon the unlawful possession. The injury complained of by this action is not the seizure, but the wrongful conversion.

1 Burr. 21.

Therefore where the sheriff, on the 5th December 1753, took the goods in execution of one *Johns*, and *Johns* having committed an act of bankruptcy on the 4th, and on the 8th a commission issued, and an assignment was executed on the same day by the commissioners, and afterwards, viz. the 28th of December following, the sheriff made a bill of sale of the goods; it was held, that the property vested in the assignees, from the time of the bankruptcy, by relation. *Cooper & an. Assig. v. Chitty & an. Sheriffs*, 1 Burr. 20.

When trover and not trespass.

Trover and not trespass lies by the assignees of a bankrupt against a sheriff, for taking the goods of the bankrupt in execution, after an act of bankruptcy, tho' before the issuing of the commission, where he sells them after the issuing of the commission, &c. and has notice from the provisional assignee not to sell. *Smith et al. against Miles*, 1 Term Rep. 475.

When it is maintainable by the sheriff.

Where the goods are seized by the sheriff under a *fi. fa.* the sheriff may maintain this action against any person for taking and converting them to his own use. 1 Lev. 282. *Wilbram v. Snow*.

When sheriff not liable to this action, as to goods leased as furni-

Where goods leased as furniture with a house have been wrongfully taken in execution by the sheriff, the landlord cannot maintain trover against the

the Sheriff pending the lease, because to maintain such an action, he must have the *right of possession*, as well as the *right of property* at the time. *Gordon v. Harper*, 7 Term Rep. 9. 4 Term Rep. 489. as to trespass.

As to other Actions.

If *fieri feci* be returned, the plaintiff may proceed by action of debt founded on his return; or, though no return be made an action of debt, account or assumpsit will still lie against the sheriff or his executors for the money levied. *Cro. Car.* 539. 2 Show. 79. 28 i. *Gilb. Exec.* 25.

And the defendant cannot in such an action plead the statute of limitations; for tho' till the writ be returned, it is not a matter of record, yet it is founded upon a record. 2 Show. 79.

Return of Writs.

THE return of all writs and process, belongs to the sheriff within his county. *Skin.* 414. And the king cannot grant to any other to have *retorna brevium* in a county. 2 Inst. 452. 1 Vent. 406.

Return of writs, belongs to the sheriff.

A subsequent sheriff may make a return of a writ delivered to his predecessor, for it is not directed to any one by name. 1 Salk. 266.

Subsequent sheriff.

The return of a sheriff is of such high regard, that generally no averment shall be admitted against it. *Kitch.* 280.

But where his life, or inheritance, is in jeopardy, an averment shall be allowed against the return. As if a *A.* be outlawed for felony, he may say that he tendered surety before the fifth county-court. 2 Rol. 462. l. 15.

And if the king grants the return of writs in such a precinct to another, the sheriff remains officer to the court, and the grantee is but a bailiff of a franchise, and ought to make return to the sheriff.

If king grants return of writs, in a precinct, sheriff remains officer to the court.

But by prescription or grant, a hundred may have return of writs within the precinct.

sheriff. 1 *Roll.* 119. But by prescription or the king's grant, a hundred or franchise may have *retorna brevium* within their precinct. 1 *Vent.* 405. 1 *Roll.* 119. So a bishop. 2 *Roll.* 202. l. 40. So an honour. *Hard.* 423. So the lord of a manor. *Ibid.*

A grantee of *retorna brevium*, shall have the execution thereof as incident, tho' it be not expressed. 1 *Vent.* 405.

At what time,

The return of a writ ought to be made before or upon the day of return named in the writ. *Mod. Cas.* 148, 159. 196. 250.

If it be returnable at a return-day, not certain, the sheriff need not return it till the *quarto die post*. *Makepiece v. Dillon, Fort.* 363.

All process directed to the sheriff to be executed and returned, &c. Sheriff, &c. ought to set their names to returns.

All process against any person, directed to the sheriff ought to be duly and truly executed, and returned into such courts out of which they were awarded.

The sheriff (as also the bailiffs of liberties which receive the king's writs returnable in his court) ought to *set their names to their return* (*viz.* their surnames and christian names, *Pl.* 63. a.) so that the court may know of whom they took such returns, if need be. *Vide stat.* 12 Ed. 2. c. 5. *vide* 8 H. 6. *Fitz. Return.* 8.

If name left out void.

And if any sheriff or bailiff do leave out his name in his return, he shall be grievously amerced, by force of 12 Ed. 2. And a return without the sheriff's name is void, and an outlawry was reversed for such cause: he is also to insert his title, and name of dignity.

Two persons sheriff.

In London where there are two persons, both ought to put their names, for they are but one sheriff. *Hob.* 70.

Coroners.

So if a return be by coroners, all ought to sign it. *Ibid.* 39 H. 6. 41.

Want of sheriff's name aided.

See *stat.* 21 Jac. 1. c. 13. The want of the sheriff's name shall be aided. See *Carth.* 56. where it is said, if the sheriff indorses, and does not subscribe his name, it is sufficient.

The

The returns are to be indorsed on the *back of the writ*; and if of length, a *schedule may be annexed on parchment*, of such return. Returns to be indorsed on back of writ.

All returns, although made by the under-sheriff, yet must be in the *name of the high sheriff*; 3 *Bulstr.* 78.; and his name must be put thereto, or it is void. Must be made in the name of the high-sheriff.

1 *Bulstr.* 73.

The sheriff must return true, and not contrary to the record, if he does, he falsifies all his proceedings. *Cro. Jac.* 223. Sheriff must return true.

But he cannot return contrary to his former return on record. 2 *Roll.* 458. l. 25. So it ought not to falsify the writ, for that belongs to the defendant. *Salk.* 581.

And the return of the old sheriff shall not conclude the new sheriff. *Dalt.* 516.

Return of old sheriff not to conclude new. Ought to answer the point and be certain.

Every return ought to answer the point of the writ, and it is said ought to be certain to every intent, as a declaration ought to be; and the sheriff is bound to take knowledge of the law in making his return; but as the sheriff's return is only to ascertain to the court the *truth of the matter*, it requires not such *precise certainty*, as is required in pleading. *Vide 8 Co.* 127, 128.

If he shew the command of the writ performed, in *substance*, it is sufficient, as it says, *infra nominatus et captus est*; *Salk.* 589.; tho' it does not say by whom, or how. If he shew the writ performed.

Attachiari feci, for *qui facit per alium facit per se* *ibid.* *Skin.* 552.

So *scire feci*, or *summ' feci*, &c. per *A.* and *B.* without saying *probos et legales homines*. 2 *Roll.* 459. l. 50. 53.

So if it refers to the writ, it is sufficient without repeating the words of it; as *scire feci prædict' a essendi sec' tenor' brevis*. without saying where or what to do. 2 *Roll.* 460. l. 2.

Ad faciendum quod breve requirit. *Ibid.* l. 5.

So it is sufficient if the return be ascertained by the writ. *Ibid.* l. 15.

So surplusage in a return shall be rejected: as

parat' habeo ubicunq', for *ubicunq'* shall be rejected. *Salk.* 589.

To answer the whole.

He ought to answer to the whole command of the writ, and therefore a panel with nine names, or less than required, is bad. *2 Roll.* 461. l. 2.

Ought to be made according to precedents.]

Returns ought to be made according to the ancient course, and according to precedents. *Dalt.* 162, 163. and by the usual words, otherwise they are not good.

Statutes of jeofail, aid misreturns.

Statutes aid misreturns, and insufficient returns, but not where there is *not* any return. *Gro. Car.* 587. *Stat.* 18 *Eliz.* 8 *H.* 6. c. 12.

None but an officer can make return.

None can make a return, but such a person, who at the time of the return remains an officer to the court.

Feigned names for summoners not to be returned.

Officers are not to return feigned names for summoners, but the true ones. *Mod. Rep.* 248. *Searl and Long's case.*

Words of writ in *elegit*, ought to be pursued.

That in returns to *elegit*, or of a writ in nature of an *elegit*, the words of the writ ought to be pursued. *Dalt.* 548.

Returns are nothing but sheriff's answer.

Returns are nothing else but the sheriff's answer, touching that which they are commanded to do by the king's writ; and are but to inform the court of the *truth of the matter*; and yet it seems to be the most difficult thing belonging to the office; for the sheriff must be very careful and circumspect that he make these returns *according to law*, both for *substance*, and *form*; otherwise he shall not only endanger himself to be amerced, or sued for the same, but also he shall endamage the parties, and may hazard the cause or suit itself: for it is often to be found that judgments have been stayed for defaults apparent in the sheriff's return. *Dalt.* 162.

Answer, if general, is indorsed, if special scheduled.

The answer of the sheriff, if *general*, is usually indorsed on the writ itself; but if it be *special*, it is commonly engrossed on a distinct schedule or piece of parchment, and annexed to the body of the writ, at the same time indorsing these words on the writ, "The execution of this writ appears in a certain schedule hereto annexed."

In

In every *original writ* where *summons lies*, the sheriff must first summon or warn the tenant or defendant to appear and answer, &c. and this must be done in the presence of *two real summoners*, which being done, the sheriff must return the writ in this manner, *viz.* if the defendant be sufficient, first he must return the two common pledges, *John Doe* and *Richard Roe*, for the plaintiff, and then the names of the summoners as follows,

Where summons lies, how the sheriff to act.

Pledges to prosecute { *John Doe,*
and
Richard Roe.

Summoners of the within-named *I. S.* (the defendant) { *William Brown,*
and
Robert Woodward,

The answer of *W. B. Esq;* sheriff.

Pledges to prosecute { *John Doe,*
and
Richard Roe.

The within-named *I. S.* hath nothing in my bailiwick where or by which I can summon him, nor is he found in the same. The answer of, &c.

Nihil in debt.

If it be on an *original* in case, then you say, The within named *I. S.* hath not any thing in my bailiwick whereby he can be attached, nor is he found in the same. The answer of, &c.

Return to an original in case.

If more defendants than one, then say, The within-named *I. S.* and *T. I.* have not, nor hath either of them, any thing in my bailiwick, whereby they or either of them can be attached, nor are they, or is either of them, found in the same.

Nihil against two.

If one be summoned, and the other not summoned, say, The within-named *I. S.* hath not any thing in my bailiwick, whereby he can be attached, nor is he found in the same.

One not found, the other summoned.

Summoners of the within named *T. I.* are { *John Denn,*
and
Richard Penn.

The answer of, &c.

N. B. Previous to any return on an *original*, put

Previous to return of original, put pledges.

wick that the within-named *C. D.* be and appear on the day and at the place within written as within I am commanded. And I further certify, that the within-named *C. D.* is not found in my bailiwick.

The within-named *C. D.* is not found in my bailiwick. The answer of, &c. Non invent to a capias, alias and pluria.

The within-named *C. D.* and *E. H.* are not, or is either of them, found in my bailiwick. The answer of, &c. The like as to two.

I have taken the within-named *C. D.* whose body I have ready as within I am commanded. The answer of, &c. Cepi corpus.

I have taken the within-named *C. D.* and *J. J.* whose bodies I have ready. The answer of, &c.

If the writ be against more defendants than one, and one be taken, and the other not, return the *cepi corpus* as to him, and as to the others say, Return of cepi as to one, and non inventus as to the others.

"and the within-named *A. G.* and *I. H.* are not, "nor is either of them, found in my bailiwick."

The answer of, &c.

If the defendant resides in a liberty, where there is a proper bailiff or officer for the execution and return of the writ; whereupon the sheriff sends his precept directing him to execute it, if it is not done, the sheriff usually makes this return: If defendant resides in a liberty.

By virtue of this writ to me directed, I have sent Mandavi ballivo. to the bailiff of the liberty of *F.* to take and arrest the within-named *C. D.* which said bailiff hath the full return of all writs and process, and the execution of the same, within the liberty aforesaid; so that no execution of this writ can be made by me within the said liberty, which said bailiff hath not as yet given me any answer thereto. The answer of, &c. *2 Roll. 460. l. 50.*

If he has answered, say, which said bailiff hath answered me thus, "That the within-named *C. D.* If writ is answered.

"is not found in his bailiwick; or, that he hath "taken the within-named *C. D.* whose body he "hath ready. The answer of *A. K. sheriff.*"

Ib. l. 45.

The

Roll of all liberties to be delivered.

The treasurer and barons of the exchequer shall deliver to the *justices*, a roll of all liberties, that have return of writs; and if the sheriff returns *mandavi ballivo* of any other liberty, he shall be punished by fine and ransom. 2 *Inst.* 452.

Amercements for insufficient returns.

Amercements for insufficient returns made by stewards or bailiffs of liberties, shall be set upon their heads, and not upon the sheriffs. *Stat.* 27 *H. 8. c.* 14.

Languidus: a good return.

Upon a *capias*, the sheriff returned that the defendant was so sick, that he could not take or carry him out of his house for fear of death; and it was adjudged a good return. *Fitz. Ret.* 105. 122. *Dalt.* 213.

Sick in prison, good.

Upon the *capias*, the sheriff returns *cepi corpus*, and that the defendant is sick in prison; this is a good return, if it be true. *Dalt. ibid.*

Return of languidus.

The return of the within writ appears in a schedule hereunto annexed. The answer of *A. P.* sheriff.

By virtue of the writ hereunto annexed to me directed, I did on the day of last, at and in a certain private dwelling-house of one situate at in my bailiwick, take the body of *C. D.* in the said writ named, she the said *C. D.* having been on the day of aforesaid brought to bed of a child, and then being so very ill, weak, and diseased therewith, that I could not remove her from and out of the room in which she was then lying so ill, weak and diseased as aforesaid, without the greatest danger and peril of her life, and the said *C. D.* having but one small room in the said house in which she lay so ill, weak, and diseased as aforesaid, I could not keep her in my custody without the greatest danger and peril of her life, whereupon I, from the necessity of the above circumstances, and for fear of occasioning her death, in case I continued her in my custody on the account aforesaid, immediately relinquished the custody of the body of the said *C. D.* so being ill, weak, and diseased as aforesaid, and afterwards and

and so soon as it might be supposed she was so far recovered of her said illness, weakness and disease, as to be able to be removed without danger of her life on that account; to wit, on the day of in the year aforesaid, I the said sheriff went again to the said house and room, for the purpose of taking the said *C. D.* into my custody in execution of the said writ, but the said *C. D.* was not then, or ever after, found there, or in my bailiwick, for which reason I cannot have the body of the said *C. D.* before the lord the king at *Westminster* aforesaid, on the day within mentioned, as within I am commanded

By virtue of this writ to me directed, I have taken the within-named *C. D.* who remains in the prison of the lord the king of *Newgate*, under my custody, so ill (a) and infirm that I cannot have his body before the lord the king at the day and place within contained, as I am within commanded, without the greatest danger and peril of his life. The answer of, &c.

Return of cell
in prison and
languidus.

Dalt. 250. 25.

In consideration that the sheriff of this day, at my request, granted upon the within writ, a warrant directed to a special officer; I do hereby agree to save harmless, and indemnify the said sheriff from and against all escapes, rescues, or rescuers, of the within-named defendant, and I do also agree, that the said sheriff shall not be compelled or compellable to make any return of the within writ.

both Indemnity to
grant a warrant.

By virtue of this writ to me directed, I have taken the within-named *C. D.* whose body remains in the prison of our lord the king under my custody. The answer of, &c.

Return in custody.

By virtue of this writ to me directed, I have taken the within-named *T. R.* and him in the prison of our lord the king, under my custody, did safely keep, until afterwards (that is to say) on

Return to a writ
where defendant
went over by a
ba. corp. in the
absence of the

(a) With various infirmities, that by reason thereof I cannot remove the body of the said *C. D.* without the greatest danger of his life. Therefore the body of the said *C. D.* I cannot have at the day and place within mentioned, as, &c.

the

chief justice
committed by
one of the other
judges.
Dalt. 538.

the fourth day of *May* in the year of his present majesty's reign, I received a certain writ of our said lord the king of *habeas corpus cum causa*, directing me to have the body of the said *T. R.* before ———, his majesty's chief justice of the common bench assigned to hold pleas in his majesty's said court, at his chambers, in *Serjeant's-Inn, Chancery-lane, London*; immediately after the receipt of the said writ, by virtue and in obedience of the said writ, in the absence of the said chief justice, I had the body of the said *T. R.* with the said writ, and the return of the within cause mentioned in a certain schedule to the said writ annexed, before the honourable *Mr. Justice* ———, one of his majesty's justices assigned to hold pleas in his majesty's said court of the bench, who, on the day and year aforesaid, received him of me, and immediately committed him to the prison of our said lord the king of the *Fleet*, and altogether discharged and exonerated me from the further custody of the said *T. R.* Therefore I cannot have the body of the said *T. R.* before his majesty's justices at *Westminster*, as within I am commanded. The answer of, &c. 1 *Leon.* 145.

Return defendant a member of parliament.

I *J. W. G. Esq;* and *W. N. Esq;* sheriff of the county of *Middlesex* humbly certify and return to his majesty's justices at *Westminster*, that at the time and before the coming of his majesty's writ of *capias ad satisfaciendum* to me directed which is hereunto annexed, the parliament of our lord the king, was and from thence hitherto hath been, and still is, sitting at *Westminster* in the county of *Middlesex*; and I further certify and return that *L. C. Esq;* in the said writ named, at the time and before the coming of the said writ to me directed, was and from thence hitherto hath been, and still is, a burgess of the house of commons, and during that time did serve as a burgess of the house of commons, for the borough of, &c. Therefore I cannot take the body of the said *L. C.* and him safely keep, so that I might have his body before his

his majesty's said justices at the day and place in the said writ mentioned, as by this writ I am commanded: The answer of, &c.

The within-named *I. L.* at the time of the delivery of this writ to me, to wit, on the day of in the year of his present majesty's reign, and from that time until the return of the said writ, was in the service of plenipotentiary from the landgrave of *Hesse Cassel*, at the *British court*, as his private secretary, therefore I cannot have the body of the said *I. L.* before the lord the king at the day and place in the within writ mentioned, as within I am commanded. The answer of, &c.

Return if protected by ambassador, &c.

The execution of this writ appears in the schedule hereunto annexed, &c. The answer of *A. P. Esq;* sheriff.

Return that the defendant was bankrupt at the time of his arrest, and he produced warrant under the hands and seals of the commissioners, and bailiff discharged him.

I humbly certify and return to our lord the king, that by virtue of the writ hereunto annexed, I did on the coming thereof to me, to wit on the 30th day of *May* last, duly make my warrant thereon under my hand and seal of office, directed to *T. K.*, *J. D.*, and *R. D.*, my bailiffs of the hundred of *O.* in my county, whereby I commanded them, each and every of them, jointly and severally, that they, or any of them, should take *D. S.* in the said precept named, if he should be found in my bailiwick, and him safely keep, so that I might have his body before the lord the king at *Westminster* at the return of the said writ, to answer to *J. H.* in the said writ named, of the plea and to the bill in the said writ mentioned, which warrant I then delivered to the said *T. K.* my officer, for execution thereof; and I further humbly certify, to our said lord the king, that before the coming of the said writ to me, to wit, on the 26th day of *May* 17—, a commission of bankrupt, bearing date at *Westminster* on that day, issued under the great seal of *Great Britain*, against the said *D. S.* directed to *J. R.*, *C. R.*, *F. D.*, *J. B.*, and *L. M.* commissioners therein named, by three of which said commis-

commissioners, namely *F. D.*, *J. B.* and *L. M.*, the said *D. S.* afterwards, and before the coming of the said writ to me, to wit, on the 16th day of *May* last, was duly found and declared a bankrupt, and as such bankrupt, the said three commissioners then caused notice to be given in writing to the said *D. S.* under their hands, according to the form of the statute in such case made and provided, that such commissioners or the major part of them in the said commission named and authorized (to wit, on the 21st day of *May* then instant, and the 1st and 29th of *June* then next, at ten of the clock in the forenoon on each of the said days, at

) had caused the said *D. S.* to be duly summoned by writing under the hands of the said three commissioners to be and appear before them, or the major part of the said commissioners in the said commission named, at those times, there to be examined, and to make a full and true discovery and disclosure of his estate and effects according to the directions of the act of parliament then in force concerning bankrupts, particularly the act of parliament passed in the fifth year of his late majesty's reign, intituled "An act to prevent the committing of frauds by bankrupts." And I further certify to our said lord the king that the commission of bankruptcy is still in force, and that afterwards, and before the coming of the said precept to me, to wit, on the _____ of *May* last, notice was duly given in the *London Gazette* that such commission had issued out, and the times and place of the said three meetings of the commissioners in the said commission named, or the major part of them, according to the form of the statute in such case made and provided, were inserted therein as herein-before mentioned, for the said *D. S.* to appear on the several days before mentioned before the major part of the said commissioners, and that forty-two days from the time of giving the said notice in the *London Gazette* are not yet expired; and I further certify to our said lord

lord the king, that by virtue of my said warrant, the said *J. K.* my officer did within the said forty-two days, to wit, on the thirtieth day of *May* last, take and arrest the said *D. S.* by his body, (he the said *D. S.* being then and there going to surrender himself to the said commissioners or the major part of them in the said commission named, with intent to keep and detain the said *D. S.* safely, so that I might have his body before the said lord the king at *Westminster* at the return of the said writ, according to the exigency of the said writ; but then the said *D. S.* then and there asserted and declared to my said officer, that he was coming to surrender himself to the said commissioners, or the major part of them in the said commission named, and then and there produced to my said officer the said summons or notice under the hands of the major part of the said commissioners, and made appear to him, that such notice, or summons, was signed by the major part of the said commissioners, and gave him a copy thereof, and demanded from him his discharge from the said arrest for the cause aforesaid, whereupon the said *D. S.* was immediately discharged by my said officer from the said arrest, according to the form of the statute in such case made and provided; and I further certify and return to our said lord the king, that the said *D. S.* was not at any other time found within my bailiwick, therefore I cannot have the body of the said *D. S.* before our said lord the king at the day and place in the said writ mentioned, as by the said writ I am commanded. By the same sheriff.

If the sheriff takes the defendant upon a writ, and he goes out of office before the return, and he has left his writ so returned, the new sheriff indorses underneath such return, thus: This writ, as above indorsed, was delivered to me the under-named now sheriff, by the above-named late sheriff, at the time of his going out of office. The answer of, &c.

If the sheriff goes out of office after defendant taken, how to return writ,

Capias ad Satisfaciendum.

If sheriff takes
body, he must
have it ready.

But take heed
that if he re-
turn cepi that
he hath the bo-
dy.

Return of cepi.

Non est invent.

If on a *ca. fa.*
execution be
done and plain-
tiff paid.

But if ruled he
must return.

Release on pay-
ment to sheriff,
no good return.

Mandavi ballivo,
who gave no an-
swer.

If the sheriff takes the body of the defendant, he must return the writ, that he hath it ready at the day *Br. Ret.* 107. and it is a good return to say, *he is not found. Liber. intrand.* 109.

But let the sheriff take heed, if herein he return *cepi corpus*, that he hath the body in court at the day; otherwise he is chargeable for the whole debt, by reason it is an escape. *Br. Ret.* 107.

I have taken the within-named *C. D.* whose body I have ready. The answer of, &c.

The within-named *C. D.* is not found in my bailiwick. The answer of, &c.

If on a *ca. fa.* the execution of it be done by the sheriff, and the plaintiff hath his demand, tho' the sheriff returneth not his writ, it is of no danger to him. *Dalt.* 213. But if he is ruled, I should think he ought to return the fact, that he took the body, and released him, on payment of the debt or damages to the plaintiff. *Dr. & St.* 18. *Dalt.* 138. For it is no good return to say *he released the body on payment of the debt*, for by the writ he hath no power to receive the money. *12 Mod.* 230. But payment over to the plaintiff, is, I should think, good; for in that case, the purpose of the writ is answered, tho' without, it is not: because the sheriff may be insolvent, and no benefit arises to the plaintiff by the execution.

By virtue of this writ to me directed, I have sent to (a) the bailiff of the liberty of *F.* to take and arrest the within-named *C. D.* which said bailiff hath the full return of all writs and process, and the execution of the same, within the liberty aforesaid; so that no execution of this writ can be made by me within the said liberty, which said bailiff hath not given me any answer thereto.

(a) Or it may be to *I. D.* bailiff of, &c.

Or it may be, which said bailiff hath answered me thus, I have taken the within-named *C. D.* whose body I have ready. The bailiff's return of capt.

In this case, the rule must be for the bailiff to bring in the body; in the other, for the bailiff to return the writ.

If the old sheriff goes out of office, after the execution of the writ, then he returns such writ in his name; and the new sheriff returns thus: This writ as above indorsed was delivered to me the under-named now sheriff, by the above-named late sheriff, at the time of his going out of office. The answer of, &c. Return by new sheriff, where the old sheriff executed the writ.

This return was held to be proper in a cause of *Leigh gent. one, &c. v. Turner, in C. P. Trin. 24 Geo. 3.* For it shews how the writ with the return comes into the present sheriff's hands; and *Dalt. 549.* hath this return. Idem brevium held good by C. P.

Tarae is not a good return to a *ca. sa.* nor to a *cap. ad respond. 5 Com. Dig. 444.*

Nor can the sheriff return the answer of a bailiff of a franchise, *quod tarde. 2 Roll. 461. l. 20.* for it is the fault of the sheriff, that he had not the writ before.

I have taken the body of the within-named *J. D.* and him detained in my custody, until he paid the debt and damages within-mentioned, which debt and damages, I paid to the plaintiff within-named, and immediately afterwards discharged the said *J. D.* out of my custody. The answer of, &c. Return of having taken defendant, who paid the money and payment by the sheriff to the plaintiff.

If a writ of execution shall come to the sheriff against a prisoner (in the gaol) who is attainted of felony, the sheriff may return, that the prisoner is attainted, and that therefore he cannot take him in execution: but if the sheriff shall serve the execution upon such a prisoner, and after he get his pardon for the felony, yet if he suffer the prisoner to go at large, the plaintiff at whose suit the execution was, may bring debt for the escape; for although by the attainder the execution were superseded, yet by the pardon it was revived. *Dalt. 214.* If execution comes and prisoner attainted, &c. what sheriff may return.

Sheriff cannot take bail, &c.

Escape if taken on a *ca. sa.* tho' there is a term intervening between *teste* and return.

The sheriff, as before said, cannot take bail, or return a *rescue* on this writ. *Cro. Car.* 240.

It is an escape if he take on a *ca. sa.* and let defendant go, although there is a term intervening between the *teste* and return, because being an execution it is not void. But it would be otherwise on *mesne process*, for there the cause is out of court. 2 *Lord Ray.* 775. Vide *Cro. Eliz.* 466. *Nesler* and *Sharpe v. Gennett* in point.

Capias utlagatum.

Vide title Bail 126.

May return non est inventus, or cepi corpus; also nihil.

UPON the *capias utlagatum* the sheriff may return the defendant not found or that he hath taken him; and he may also return that he hath not any lands, goods or chattels on the day he was outlawed, or at any time since.

May on this writ imprison an infant.

And it is said, that on this writ if it be against an infant of the age of 14 years, the sheriff may imprison him, and seize his goods. *Dalt.* 215.

Sheriff on this writ may take the *posse comitatus*. *Fitz. Return.* 110. *Dalt.* 217.

May return in prison for a debt.

The sheriff, it is said, may return that the party is in prison, upon a condemnation for debt. *Lib. Inst.* 336. *b.* But then he must bring him into court.

What sheriff and officers may do on this writ.

The sheriff and his officers on this writ may seize to the king's use all the goods and chattels real and personal, of all such persons as shall be outlawed in any personal action, that they had at the time the outlawry pronounced: And they may take for the king all the profits of the lands in the possession of the party outlawed, they may mow or sever, and take all the corn and grass growing, and take the feed and herbage of the grounds, &c. (as they arise and grow of themselves) and the rents of his farmers, as the party outlawed might: But they may not meddle with the possession of the lands, to plow, sow, grant or let

Goods and profits of land.

Mow, sever, and take corn, grass.

But not meddle with possession of the land.

let the same, &c. And if the party outlawed shall make a scoffment of his land, the king shall have no more the profits thereof, but the scoffee shall have the same, for that the king hath not any possession of the land, altho' he hath the profits thereof. *Br. Her.* 24. 26. & 30. *Br. Issues* 9, 10. *Plow.* 541. b. *Stamf. de Prerog.* 57. b. And yet if the tenant for years be outlawed, the king (or his officers) may seize the land and term, and may plow the same land to sow the corn, and may occupy the same in the same manner as the termor or tenant might. But otherwise it is, when the tenant of a freehold is outlawed; for in such case, the king may cut the grafs, &c. for that it is a thing that is annual, (sc. yearly cut or fed,) but he may not plow the land, nor cut the underwoods; neither shall the king, or his officers, meddle to cut or crop any trees growing upon the freehold. 9 *H. 6. fol.* 21. *Dalt.* 83. But where a woman executrix takes a husband who is outlawed, the goods of the testator shall not be thereby forfeited. 33 *H. 6. Br. Forf.* 71. And so if an executor himself be outlawed, he shall not thereby forfeit the goods of the testator. *Ibid.*

If tenant of the freehold outlawed.

If woman executrix takes a husband who is outlawed, goods of testator not forfeited.

If a woman covert be outlawed in an action of debt or trespass, the king is not to have her term (or a lease for years which she hath) for that it is in the husband. 9 *H. 6.* 52.

Woman covert be outlawed, king must have her term.

He that is outlawed in a personal action, shall forfeit such debts as were due to him by simple contract. 4 *Co.* 95. a. *Slade's Case*, so by bond or other specialty. *Br. Forf.* 107. 16 *E.* 4. and 4 *H.* 7. 17.

Outlaw forfeits debts.

No goods lawfully distrained, let or demised, pawned or pledged, shall be taken or seized for outlawry, until the lease be determined, or the rent or other satisfaction be yielded upon the distress, or the money paid for the pawn or pledge. 4 *E.* 6. *Br. Distrain*, 75. 22 *E.* 4. But goods bailed or delivered me to keep, if the bailor outlawed, these goods may be seized and taken for the king.

Goods distrained, let, pawned, &c. not to be seized.

What may not
be taken.

No goods fixed or annexed to the freehold, shall be taken or seized for outlawry; as a furnace, table fixed to the ground with posts, nor wainscot, doors, windows, locks, pales and the like. 20 H. 7. fol. 13. b. and 2 E. 4. 12. Deer in a park, shall not be forfeited by outlawry, in a personal action. 10 H. 7. fo. 7. a.

If body taken.

If the sheriff take the body, how to proceed. fo. 129. title Bail.

Two outlawries.

Where there are two outlawries at different times, the first inquisition shall prevail; and where there are two in one day, and both inquisitions on one day, there the first lease shall be preferred. Parker's Rep. 112.

Copyhold lands
not liable.

Copyhold lands are not liable to be seized upon an outlawry, because it would be prejudicial to the lord, nor upon an extent. Ibid. 190. 195.

If goods, &c.
taken, the sheriff
takes inquisition.

If there are goods taken, or lands, &c. on the writ, the sheriff is to take an inquisition thereon, and enquire by a jury what goods, lands or chattels, the party outlawed had the day of the outlawry or at any time after, and return his inquisition so taken into court, and the goods so taken he may keep until he receives a *venditioni exponas*, for the sale thereof. Dalt. 214, 215.

The inquisition
on a *capias ut-
lagatum*.

Middlesex, } An inquisition indented taken at
to wit. } *Guildhall, Westminster*, in the county
aforesaid, on the day of in the
39th year of the reign of our sovereign lord
George the third, by the grace of God, of Great
Britain, France and Ireland, king, defender of the
faith, &c. before me, W. G. esq; and W. N. esq;
sheriff of the county aforesaid, by virtue of the
king's writ to me directed, which is hereunto an-
nexed on the oath of A. B. C. D. (here name the
12 jurors) good and lawful men of my bailiwick,
who being sworn and charged to enquire of all and
singular the things in the said writ mentioned, and
contained, on their oath say, that C. D. in the said
writ named, on the day of last,
on which day he was outlawed, was, and on the
day

day of taking this inquisition, is possessed as of his own proper goods and chattels, of and in two beds, &c. (here set forth exactly the goods and chattels taken and also be particular as to describing the debts due to the outlawed, or the return will be bad, and how he came by every bill or note of hand, if any, viz. by indorsement, or acceptance, &c. and the parties names indorsed thereon, and also shew, whether the debts seized, are for goods sold, money lent, &c. if you have evidence before you, (but not else).

And also of and in the remainder of a certain term of 99 years to come, and unexpired, of and in all that piece or parcel of ground, (here describe the premises as in the lease,) demised by indenture of lease, bearing date the day of 17 and made between, &c. at the yearly rent of all and singular which goods, chattels, and premises, are the property of the said C. D. and that the said goods and chattels are worth, to be sold, the sum of £ of lawful money of Great Britain, which said goods and chattels, I the said sheriff on the day of taking this inquisition, have seized and taken into his majesty's hands, according to the command of the said writ, and the jurors aforesaid, upon their oath aforesaid, further say, that the said C. D. on the said day on which he was outlawed, or at any time since, had not, nor on the day of taking this inquisition, hath any lands or tenements, or any other or more goods or chattels in my bailiwick to the knowledge of the said jurors, which can be seized or taken into his majesty's hands by virtue of the said writ. In witness whereof, as well I the said sheriff, as the said jurors aforesaid, to this inquisition have set our seals the day and year first above-mentioned.

The within-named C. D. is not found in my bailiwick: The residue of the execution of this writ appears in the inquisition hereto annexed. The answer of, &c.

Return to be indorsed on the writ.

Return of nulla
bona.

Inquisition indented, &c. upon their oath say, that J. S. in the said writ named, hath not, nor had he on the day of on which day he was outlawed, any goods or chattels, lands, or tenements, in my bailiwick, to the knowledge of the said jurors, which can be seized or taken into his majesty's hands by virtue of the said writ. In witness, &c.

**Return of ven-
ditioni exponas.**

By virtue of this writ to me directed, I have sold the goods and chattels within-mentioned, for the within-mentioned sum of £. being the dearest price I could get for the same, which monies I have before the barons of the king's exchequer at *Westminster*, at the day within-mentioned, ready to be paid to his majesty's use. The answer of, &c.
Vide the charge to the jury on this writ, 170.

To a distringas
nuper vice com.,
distrained.

Summoners are, { *John Denn,*
and
Richard Fenn.

Issues 40 s.

The answer of J. A. esq; sheriff.

Nihil to a dis-
tringas against a
member.

The within-named J. S. hath not any lands or chattels in my bailiwick, where or by which I can distrain him as within I am commanded. The answer of. &c.

Sheriff returned, that he had sent to the bailiff, and he gave no answer, but did not return, nihil therefore amerced.

In debt upon a distringas, the sheriff returned, that he had sent to the bailiff of the liberty, and that he gave no answer, and for that he did not further return, that he had nothing in his bailiwick, he was amerced. *Br. Ret. 23.*

May return tar-
de, but not a-
gainst late sheriff.

The sheriff may return to this writ, *tarde*, "but not against the late sheriff," on his return of *cepi*; in that case, he must return issues. Br. 24. and not less than 40 s.

Ought to disstrain
reasonably.

Although the words of the *disfringas* are, that the sheriff distrain the defendant by all his lands and chattels, yet he ought to distrain him reasonably, and not according to the words of the writ. *Br. 120.*

Usual effus.

The usual issues on the first distringas, are 40 s. on the second, 4 l. and so double the sum, except a rule comes to the contrary.

That

That in a *distingas*, by all his lands and chattels, so that he have his body, &c. the sheriff must return issues upon the defendant, and not distrained. *Br. 24. Dalt. 224.*

Must return issues, and not distrained.

The execution of this writ appears in the panel annexed. The answer of, &c.

Distingas juratorum.

Middlesex, } The names of the jury between *A. B.* to wit. } plaintiff, and *C. D.* defendant, in a plea of debt. (Here insert the names of the jury.)

There are *distingas* against bodies corporate, peers, members, &c. all of which are to have issues returned on them, or *nihil* as before mentioned.

— } *T. B.* esq; sheriff of the county aforesaid to wit. } said, to *A. B.* my bailiff, greeting, by virtue of his majesty's writ of *ad quod damnum*, under the great seal of *Great Britain*, to me directed, I command you, that forthwith you summon the several persons here under-named, that they be and appear before me on the day of at of the clock in the forenoon of the same day, at the house of commonly called or known by the name, or sign of the in in my county, then and there to enquire if it will be to the damage or prejudice of our sovereign lord the king, or of any other, if our said lord the king should grant unto *M. B.* in the said writ named, licence to inclose certain footways, or paths, or passages, in the said writ particularly specified; and all and every such other matters and things as shall be then and there given them in charge. Hereof fail not as you will answer at your peril. Given under the seal of my office the day of in the year, &c.

Warrant on a writ of *ad quod damnum*.

— } *An inquisition* indented, taken at the to wit. } *king's head inn*, in the said county, on the day of in the year of the reign of our sovereign lord *George* the third, &c. and in the year, &c. before *J. B.* esq; sheriff of the said county. By virtue of a writ of our sovereign lord the

An inquisition taken on a writ of ad quod damnum.

the king to me directed, and to this inquisition annexed, by the oath of *C. M. &c.* who being charged and sworn upon their oath, say, that it will not be to the prejudice or damage of our sovereign lord the king, or of any other, if our said lord the king should grant to *M. E.* in the said writ named, licence to inclose a certain way or road lying within and under the south walls of the city of *C.* leading from, &c. and also, if the said *M. E.* doth hold the said way or road so inclosed, to him the said *M. E.* his heirs and assigns for ever, so that there be and remain, instead of the said way or road, so to be inclosed as aforesaid, another way or road as convenient and commodious for travellers and passengers passing through the same. *In witness, &c.*

Dower.

Every summons on the land, is to be made fourteen days before the return of the writ, and proclamation at the church door on a Sunday.

What sheriff is to do.

By 31 *El. c. 3.* it is enacted, “ That after every summons upon the land in any real action, fourteen days at the least before the day of the return thereof, proclamation of the summons shall be made on a Sunday in form aforesaid, at, or near to the most usual door of the churches or chapel of that town or parish, where the land, whereupon the summons was made doth lie, and that proclamation so made as aforesaid, shall be returned together with the names of the summoners; and if such summons shall not be proclaimed and returned, according to the tenor and meaning of this act, then no *grande cape* to be awarded, but an *alias* and *pluries* summons, as the cause shall require, until a summons and proclamation shall be duly made and returned, according to the tenor and meaning of this act.” *Sec. 2.*

Upon a writ of dower, the sheriff must first summon the defendant upon the land, and after he is to proclaim the summons at the church door of the parish where the land lieth, and it is said, a summons

mons personally on the defendant seems sufficient without either summons on the land, or proclamation at the church door. *Dalt.* 225.

Pledges to prosecute, { *John Doe,* *Return to a writ*
and *of dower.*
Richard Roe.

Summoners of the within-named *C. D.* are, { *Richard Mills,*
and
John Freer.

And at the most usual door of the parish church of *Saint S.* within-mentioned, on *Sunday* the day of in the year within-written, immediately after divine service and sermon ended, I did cause public proclamation to be made, according to the form of the statute in such case made and provided. *Proclamation thereon.*

The answer of, &c.

Upon the *grand cape*, the sheriff hath two things *Grand cape.* in command; the one to take the land in the hands of the king, and the other to summon the tenant; but the first is mere form, and void, and the sheriff ought not to seize the lands into the king's hands by forcethereof. *Dalt.* 249. He must summon the tenant to answer to his default, and further to answer to the demand. *Ibid.* and the sheriff ought to return the names of the summoners. *Br. Ret.* 86. *N. R. brev.* 178. *Dalt.* 249.

If the place be within a franchise which hath *Franchise.* full return of writs, then the sheriff is to write to the bailiff who is to make return to the sheriff. *Dalt.* 249. *Libr. Intr.* 399. *b.*

The grand cape must be served fifteen days before the return-day. *Br. Grand Cape,* 29. *When to be served.*

If there be no lands, &c. the sheriff may return nihil. *Fitz.* 113.

See *Return of Writ of right Patent.*

By virtue of this writ to me directed, I have by *Return of grand*
A. B. and *E. H.* good and lawful men of my bailiwick, given notice to the within-named *C. D.* to be and appear before the king's justices at *Westminster*, at the time and place within-mentioned, and as I am within-commanded, I have taken by the view of *I. S.* and *T. H.* honest and lawful men

men of my county into his majesty's hands the land and premises within-mentioned, as also I am within-commanded. The answer of, &c. (a)

The execution of this writ appears in a certain schedule hereto annexed. The answer of, &c.

Return to a writ
of hab. fac. sci-
finam.

By virtue of this writ to me directed, and to this schedule hereto annexed, I humbly certify to the justices of our lord the king of the bench, that on the 10th day of *June*, in the 39th year of the reign of his present majesty, I have delivered to the within-named *P. B.* full *seisin* of the third part of the messuages, lands and premises, with the appurtenances in the said writ specified, (that is to say,) of two messuages, situate and being in the parish of *A.* in the said county, and in the tenure of *J. B.* and *C. D.* with the appurtenances thereto belonging, and also of two acres of land with the appurtenances, in the parish and county aforesaid, in the possession of, &c. to hold to the said *P. B.* in fealty by metes and bounds, as and in the name of dower of her the said *P. B.* of the endowment of the said *J. P.* her late husband, as by the said writ I am commanded.

How to put in
the demandant
in possession.

If a woman recover in a writ of dower, the sheriff may put her in possession or *seisin* by a clod, or by grafs growing upon the land, or by any beast being thereupon, &c. 40 *E.* 3. *Fitz. Dower.* 38.

What sheriff
may deliver.

In a writ of dower, a writ went to the sheriff to deliver the wife ten marks *per annum* in land and rent for her dower, and the sheriff delivered her in land, five marks in yearly value, and five marks in rent, issuing out of the land, whereof she was dowable, and it was holden a good endowment. *Br. Dower.* 61.

If there are three
manors,

In dower of three manors, or three acres, the sheriff may assign to the wife one manor, or one acre for all; and he may assign the whole manor with the advowson; or may assign the third part of each, and the third presentment. 12 *E.* 4. *Br. Dower.* 72. *Plow.* 65, 66.

(a) The words of the writ are; *take into our hands by the view of honest and lawful men of your county, ten messuages, &c.* 3 *Will.* 55.

And

And note, that in dower, the sheriff is to make execution, and put the wife in execution of the third part by metes and bounds, if he can, *3 Eliz. accord. & Co. L. 34 & 32.* and here the sheriff is a judge, and may execute the same himself, and shall not need to do it *per sacramentum* 12, &c. But if the sheriff and the wife shall come together to the land, the sheriff may not make execution by these words, or in this manner, *i. e.* I deliver the *seisin* of the third part of the land according to the recovery, for that is not good. *Fitz. scire fac. 92.*

Sheriff to put the wife in execution of third part.

In some cases, the wife cannot have her dower assigned by metes and bounds, but must hold her dower *per my et per tout in common*: as, of the profits of a mill, or of a wood, which co-parceners hold, &c. *Fitz. Avowry, 9.* or of a common of pasture, *Fitz. Ent. 75. Affise, 435.* or of an office, or of lands held in common, *Fitz. 149.* and by *Co. L. 32.* she may have a third part of the profits assigned to her.

In some cases, the wife cannot have her dower assigned by metes and bounds, as for instance, &c.

Dorsetsh. } An inquisition, indented taken at, &c. Inquisition in
to wit. } in the county aforesaid, on the fifth day dower.
of May, in the year of the reign of our sovereign lord George the third, &c. and in the year of our Lord 17—, before me, *N. C. esq;* sheriff of the county aforesaid, by virtue of his majesty's writ to me directed, and to this inquisition annexed, by the oath of *S. C. J. G.* (here name the twelve jurors,) good and lawful men of my county, who upon their oath say, that the within-named *S. A.* on the day of 17 died seised in his demesne as of fee of and in one messuage, called the *George Inn*, one stable and one close of meadow called, &c. (naming the several particulars,) situate, lying, and being in in the parish of in the county aforesaid, and of and in *5 l. 19 s. 4 d.* issuing from and out of the following messuages in aforesaid, to wit of *10 s.* rent, issuing from and out of a messuage in the tenure of *A. R.* of *10 s.* rent, issuing from and out of a messuage in the

the tenure of *J. T.* of 10*s.* rent issuing from and out of a messuage in the tenure of *J. H.* of 10*s.* rent, issuing from and out of a messuage in the tenure of *R. S.* of 10*s.* rent, issuing from and out of a messuage in the tenure of *W. P.* of 10*s.* rent, issuing from and out of a messuage in the tenure of *G. R.* of 8*s.* rent, issuing from and out of a messuage in the tenure of *J. P.* of 6*s.* rent, issuing from and out of a messuage in the tenure of *K. D.* of 8*s.* rent, issuing from and out of a messuage in the tenure of *R. C.* of 1*l.* rent, issuing from and out of a messuage in the tenure of *S. O.* and of and in the reversion of the same messuages after the expiration or sooner determination of certain terms of years thereof respectively granted; and that the said *S.* did not die seised of any other messuages, lands or tenements, to the knowledge of the same jurors. And the jurors aforesaid on their oath further say, that the tenements and premises abovenamed, with the appurtenances, are of the clear yearly value, in all issues beyond reprises, of 60*l.* 11*s.* 3*d.* and that the said *B. S.* esq; and *M.* his wife, in the writ aforesaid named, have sustained damages by reason of the detention of the dower within specified, from the said day of the issuing of the writ original within mentioned, beyond the value aforesaid, to 10*l.* 5*s.* 11*d.* and for their costs and charges by them about their suit in that behalf expended to 10*s.* In witness whereof, as well I the said sheriff, as the jurors aforesaid, have to this inquisition interchangeably set our seals, the day, year, and place above said; and I do further humbly certify to the justices of the lord the king at *Westminster*, that by virtue of the said writ, I did on the day of in the year aforesaid, cause the said *B.* and *M.* to have full *seisin* of the third part of the tenements and rents aforesaid, with the appurtenances, to wit, of the said messuage, with the appurtenances called the *George Inn*, in the tenure of *A. B.* the said messuage with the appurtenances, &c. of the said 10*s.* rent,

rent, issuing from and out of the said messuage in the tenure of *A. R.* of the said 10 *s.* rent issuing from and out of the said messuage of *J. T.* of the said 10 *s.* rent, issuing from and out of the said messuage in the tenure of *F. S.* of 9 *s.* 9 *d.* rent, parcel of the said 10 *s.* rent, issuing from and out of the said messuage in the tenure of *J. H.* and also of the reversion of the four messuages last mentioned, after the expiration or sooner determination of the said terms of years thereof respectively granted, with the appurtenances, to hold to the said *B.* and *M.* in severalty by metes and bounds as the dower of the said *Mary*, of the endowment of the said *S. A.* her late husband, as by the said writ I am commanded.

N. C. esq; sheriff.

Partition.

Oxfordshire, ff. *A. B.* esq; sheriff of the county Warrant on the
afore said, to *B. L.* and *M. L.* my bailiffs of the writ of partition:
hundred of *S.* greeting. By virtue of his majesty's writ to me directed, I command you, that if *C. K.* shall give me security, that her suit shall be prosecuted, then summon *M. C.* that he be before his majesty's justices at *Westminster*, in fifteen days of *Easter*, to shew why the said *C. K.* and *M. C.* hold together and undivided, ten messuages and twenty acres of land, &c. (here set forth the parcels as in the writ,) with the appurtenances in the parish of *K.* in the said county, and whereupon the said *C. K.* denies partition thereof to be made between them, according to the form of the statute in such case made and provided, and unjustly permits the same to be done, contrary to the statute. Hereof fail not. Given under my seal of office, &c.

This is to be served on the tenant of the premises if found, if not, the wife, son, or daughter of the tenant, (being twenty-one years old,) forty days before the return. 8 & 9 *W.* 3. c. 31. *stat.* 1.

Pledges

Return of the writ.

Pledges to prosecute, { *John Doe,*
and
Richard Roe.

Summoners of the within- { *I. S.*
named, *C. K.* and *B. L.* are, { and
L. W.

The answer of *A. B.* esq; sheriff.

Judgment on the writ of partition.

It is said in 1 *Inst. sect.* 248. that when judgment is given upon the writ, it is thus; "That the partition shall be made between the parties, and that the sheriff in his proper person shall go to the lands and tenements, &c. and that he by the oath of twelve lawful men of his bailiwick, &c. shall make partition between them, and that one part of the lands and tenements shall be assigned to the plaintiff, or to one of the plaintiffs, and another part to another parcener, &c. not making mention of the eldest sister, more than of the youngest."

If the sheriff cannot attend, under-sheriff with two justices may.

It appears there was great inconvenience to the sheriff to attend in person, sometimes on account of the distance, at other times his health, or some other infirmity, that might prevent him; for which reason an act was made in the 8th and 9th years of *William* the third to ease him in his duty, by which it is enacted, That when the high-sheriff by reason of distance, infirmity, or other hindrance, cannot conveniently be present at the execution of any judgment in partition, the under-sheriff in the presence of two justices of the peace, may proceed to execution by inquisition; and the high-sheriff shall make the same return, as if he were personally present; and the tenants of the lands shall be tenants for such parts, set out severally to the respective owners, under the same rents and reservations; and the owners of the several purparts shall make good unto their respective tenants the said parts severally, as they were bound to do before partition made. 8 & 9 *W. 3. c. 31. s. 4.*

In case of disability of sheriff or his under-

The sheriffs, their under-sheriffs and deputies, and, in case of disability in the high-sheriff, all justices

tices of peace, shall give due attendance to the sheriff, the justices are to attend. executing such writ of partition (unless reasonable cause be shewn to the court upon oath) or otherwise, be liable to pay unto the defendant such costs and damages as shall be awarded by the court, not exceeding 5 *l.* for which the defendant may bring his action in any of his majesty's courts at *Westminster*; and in case the demandant doth not agree to pay unto the sheriff or under-sheriff, justices and jurors, such fees as they shall demand, the court shall award what such person shall receive, having respect to the distance of the place from their habitations, for which they may severally bring their actions. *Stat. 5. made perpetual by 3 & 4 Ann. c. 18.*

On receipt of the writ, the sheriff is to summon a jury of twelve men qualified by the several acts mentioned in 3 *Geo. 2. c. 24.* and to give notice to the parties to attend him, and on the day he is to go to the land, &c. with the jurors (which ought to be shewn them,) and then shall see the same and the boundaries thereof, then on evidence being given him, he draws up in form an inquisition, which he and also the jurors are to sign and seal, pursuant to the writ; and the reason why they sign and seal the same is, for the better strengthening of the partition, and that the sheriff should not return what partition he himself thinks proper: when the partition is made and the inquisition signed, &c. he is to return the same to the justice, under his seal and the seal of the twelve jurors, so that they may give their final judgment thereon. *Co. Lit. 249. 168, b. 169.*

If the fees are not paid to the sheriff, &c. by the demandant, then the court shall award the same, for which the sheriff, &c. may bring their actions severally. *Stat. 5.*

It is said that the jury ought to be shewn the lands before they make partition; but if not, they must make it to the best of their judgment; for they are compellable to make partition at their peril. *Dyer, 265, 266.*

H H

Upon

Upon partition
between tenants
in common, and
one purchaseth
land which lies
intermixt, ought
to shew them.

Upon a partition to be made between tenants in common, where one of them hath purchased lands that lie intermixt and cannot be known, the party which purchased such lands ought to shew the jury the bounds, (or the certainty or number of acres) of his land so purchased, but if neither party will give evidence therein to the jury, yet the sheriff and the jury are to make partition at their perils, as well as they can. *Dalt.* 265.

What sheriff
may assign.

If there are two manors, the sheriff may assign one manor to one, and the other manor to the other, so that *both be of equal value.* *Bro. Part.* 29.

Advowson.

So an advowson may be divided between partners, the one to present one turn, and the other, another turn. *Co. Lit.* 32. *Stat.* 7 *Ann.* c. 18. So a rent-charge, *ibid.* but estovers, as house boot, hay-boot, and fishery uncertain, as without number cannot be divided, *ibid.* The profits of a mill, dove house, of courts, tithes, and of stallage of a fair may be parted. *Ibid.* 32.

Rent-charge,
&c.

If co. palat. how
to make parti-
tion.

If a county palatine descend to divers coparceners, and they make partition, every one of them shall have a several county palatine, and the liberties and prerogatives in it. *Dalt.* 61. 16 *Vin.* 224.

How coparceners
of a manor are
to make parti-
tion.

So if coparceners of a manor make partition, every one shall have a several manor and court baron. *Dalt.* 61.

To name the
lands in the in-
quisition.

In the inquisition it is fit that the sheriff name the lands, &c. and allot and shew the contents of them.

Inquisition on a
writ of partition.

Oxfordshire, } An inquisition indented, taken at, &c.
to wit. } in the county aforesaid, on, &c. be-
fore me *N. C.* esq; sheriff of the said county, by vir-
tue of his majesty's writ of *partitione facienda* to me
directed, commanding me to cause ten messuages,
&c. (here set forth the premises) in in my
county, to be divided into two equal parts, and
one part of those parts to be delivered and assigned
to *C. K.* and the other part thereof to *M. C.* to
hold

hold unto them and their heirs in severalty, on the oath of *A. B. C. D. E. F. &c.* (here set forth the jurors names) twelve free and lawful men of the said county, being charged and sworn to inquire of all and singular the matters and things in the said writ mentioned and contained, on their oath say, that the messuages, lands, tenements, and annual rents with the appurtenances, comprized in the schedule annexed, marked with the letter *A.* is one equal part of the messuages, lands, tenements, and annual rents, with the appurtenances, specified in the said writ, and that the several messuages, lands, tenements, and annual rents, comprized in the schedule hereto annexed, marked with the letter *B.* is the other equal part thereof, and the said messuages, lands, tenements, and annual rents, being so into two equal parts divided, I the said sheriff having respect to the true value thereof, on the day and year aforesaid, in the presence of the parties, by the oath and in the presence of the jurors aforesaid, the said first mentioned equal part comprized in the schedule marked with the letter *A.* to the said *C. K.* have caused to be delivered and assigned, and the said last mentioned partition, comprized in the schedule marked with the letter *B.* to the said *M. C.* have caused to be delivered and assigned; to hold to them and their heirs in severalty, by the assignment and allotment made as aforesaid, according to the exigency of the said writ, so that neither the said *C. K.* nor the said *M. C.* have more of the said messuages, lands, tenements, and annual rents aforesaid, with the appurtenances, than to them thereof belongs, and the said *C. K.* and *M. C.* may severally apportion themselves. In witness whereof, as well I the said sheriff, as the jurors aforesaid, have to this inquisition set our hands and seals, the day and year first above written.

The parcels may be set forth at large, and the rent, in the inquisition without annexing a schedule, the same as in an elegit.

Of the Exchequer Process.

TWICE a year processses issue from the court of exchequer, directed to the sheriff of each county, to execute and make returns; and also a writ of summons from the pipe, to summons the sheriffs to appear before the chancellor and barons in the exchequer on the day prefixed, to have the monies collected and which they owe to the king; and also a writ of summons of the green wax for their like appearance.

To the two latter writs, the sheriff makes no return in writing; but he is apposed before the curfitor baron and the foreign apposer, he therefore keeps a copy of those schedules, so that he may answer, on their being read over to him.

The other writs are called

1. *A distringas against collectors of taxes.*
2. *The like, against inhabitants of parishes, for insufficiency of collectors.*
3. *The like, against persons being accountants to the crown, for taxes or money imprest, namely receivers general, agents, pay-masters, contractors, &c.*
4. *The like, against the executors of deceased accountants, and*
5. *The long writ, which is against the body, lands, and goods, of the persons named in the schedules annexed.*

As to the Return of those Writs.

To No. 1. The proper return is *nihil*, unless the sheriff is informed that the collector has actually received the *insuper*, in that case, he should distrain and return *large issues*. The propriety of a *nihil* return to this writ (except in the case above mentioned) arises from hence. When an *insuper* is set by a receiver general against a parish, the first *distringas* always issues against collectors, as if the *insuper* had been actually set against them: because it is always to be presumed, that the parish has paid

paid the collectors, but after a *nihil* return on the *distringas* against collectors; the next *distringas* is issued against the inhabitants of the parish, whether the money has been received by the collectors, or not; because the inhabitants are responsible for the insufficiency of the collectors; but so long as issues are returned against collectors, the *distringas* does not issue against the parish.

To No. 2. To this writ the proper return is *issues*, not less than *one shilling* in the pound.

If to save trouble and expence the parish offer to pay the *insuper* into the hands of the sheriff, he may then receive it, and must then state it in his return, and thereupon a record of the payment is made and drawn down into the pipe in order to be set in charge on the sheriff.

To No. 3. To this writ the proper return is *issues*.

There being no person whose proper business it is to point out to the sheriff the residue of the persons named in the schedules to this writ, and there being at the time of issuing the same, some uncertainty whether the whole of each *insuper* remains due; sums in part thereof being paid into the receipt from time to time, without bringing the tallies to the exchequer office, in order to meet the proofs. The sheriff should act with caution in the execution thereof; but though he cannot be expected to distrust and return issues against every person named in the schedules, yet some *reasonable diligence* should be used by him, in the execution of this writ.

To No. 4. Unless the executors are known, the sheriff cannot return issues on this writ, and must therefore make a return of *nihil*.

To No. 5. The proper return and inquisition to be taken in pursuance of this writ, are well understood.

The general process is so termed, in contradistinction to special process.

The former consisting of various writs which are issued

issued from the king's remembrancer's office after every issuable term agreeably to antient usage, against various debtors to the crown conjointly, or generally, whose names or debts are inserted in schedules annexed to each of those writs.

The *latter*, or *special process*, consists of separate writs, which issue at no stated periods, but as occasion may require against individual debtors to the crown, *separately* and *specialy*, for the recovery of their debts.

The execution of the *general process* continues to be confided to the discretion of the sheriffs, regulated by their oaths, in the apposals in the same manner as it was in antient times, when they were principally employed in the collection of the revenue; but the execution of the *special process* of this court, is superintended by the solicitors of the different branches of the revenue, at whose instance the same are issued.

Return of nihil
to No. 1.

I humbly certify that the collectors in the schedules hereunto annexed named, have not any thing in my bailiwick, whereby I can distrain them, or any of them, nor are they found in the same.

The answer of, &c.

Return of issues
to No. 2.

By virtue of this writ to me directed, I have distrained the inhabitants of the several parishes in the schedules hereunto annexed mentioned, as within I am commanded, and return issues on the several sums in the said schedules mentioned, after the rate of 1 s. in the pound.

The answer of, &c.

Return thereto
levied.

Middlesex, } *W. C.* esq; and *P. M.* esq; sheriff of
to wit, } the said county, do certify to the
barons of his majesty's court of exchequer at *West-*
minster, that by virtue of the writ hereunto annexed,
I have distrained the inhabitants of, &c. in the
5th schedule to the said writ annexed mentioned,
and they have thereupon paid into my hands, the
several sums of £ ——— and £ ——— in the said
schedule mentioned, and also the several sums of
£ ——— and £ ——— in the 7th schedule to the
said

said writ annexed mentioned, and also the sum of £—, &c. (here state the levy), amounting in the whole to the sum of £—, which said money I have ready.

The answer of, &c.

I humbly certify that the persons in the schedules annexed named, have not any thing in my bailiwick whereby I can distrain them, or any of them, nor are they, or any of them, found within the same.

Return of nihil
to No. 3.

The answer of, &c.

I humbly certify that the executors, administrators, occupiers, heirs, or tenants, within mentioned, have not, nor hath any of them, any thing in my bailiwick whereby I can distrain them, or any of them, nor are they, or any of them, found in the same.

Return of nihil
to No. 4.

The answer of, &c.

The several persons in the schedules hereunto annexed named, have not, nor hath any of them any goods or chattels, lands or tenements, in my bailiwick, whereof or whereby I can levy on them the several sums of money respectively charged on them, as within mentioned, or any part thereof, as within I am commanded, nor are they, or any of them, found in my bailiwick. The executors, administrators, and possessors, heirs, and terre-tenants within mentioned, have not, nor hath any of them, any lands, or chattels, in my bailiwick, whereof or whereby I can distrain them, or any of them, as within I am commanded; nor are such executors, administrators, possessors, heirs, or terre-tenants, or any of them, found in my bailiwick. The residue of the execution of this writ appears in a certain inquisition hereunto annexed.

Return to the
long writ, No. 5.

The answer of, &c.

Middlesex, } An inquisition indented, taken at *The inquisition.*
to wit. } &c. on the 27th day
of *September*, in the 39th year of the reign of our
sovereign lord *George the third*, by the grace of
God of *Great Britain, France, and Ireland*, king,
defender of the faith, &c. before me *A. B. esq;* and

C. D. esq; sheriff of the said county, by virtue of his majesty's writ to me the said sheriff directed, and to this inquisition annexed, to enquire of certain matters in the said writ specified, by the oath of *A. B. C. D.* (here name the twelve jurors) honest and lawful men of the bailiwick of me the said sheriff, who upon their oath say, that to the knowledge of them the said jurors, the several persons in the schedules to the said writ annexed named, had not, nor had any of them, any lands, or tenements, in my bailiwick, upon the several days, on which in the said schedule each, and every of them are mentioned to have first become his majesty's debtors, or at any time since, to the day of the taking of this inquisition; nor have, or hath the said several persons, or any of them, any goods or chattels in my bailiwick. And the jurors aforesaid, upon their oath aforesaid, further say, that they know not whether any of the said several persons be dead, or on what day, or in what year, or where they, or any of them, died; nor had the said several persons deceased, or any of them, to the knowledge of the said jurors, any goods or chattels in the bailiwick of me the said sheriff, at the time they respectively died; nor did the said several persons deceased, or any of them, to the knowledge of the said jurors, die seized of any lands, or tenements, in the bailiwick of me the said sheriff; therefore the said jurors say, they cannot appraise any such goods or chattels, lands or tenements as aforesaid, as by the said writ is commanded: nor can I the said sheriff take, or seize, any such goods or chattels, lands or tenements as aforesaid, into his majesty's hands, as by the said writ I am commanded: In witness whereof as well I the said sheriff, as the said jurors, have to this inquisition set our hands and seals, the day and year first above written.

Return to the
long writ process
against persons
for recognizances
forfeited, &c.

I have levied of the goods and chattels in my bailiwick of the several persons named in the schedule to this writ annexed, marked *A.* and signed by

me the under-named sheriff, the several sums of money, set opposite to the respective names of such several persons, and amounting in the whole to the sum of £ 20. which money remains in my hands, ready to be paid to his majesty's use; the several other persons named in the schedules annexed to this writ have not, nor hath any of them, any goods, or chattels, in my bailiwick, whereof or whereby I can levy the several sums of money charged upon them, and each of them, in the said last-mentioned schedule, or any part thereof, as within I am commanded, nor are such several persons, or any of them, found in my bailiwick; the executors, heirs, and tenants within mentioned, have not, nor hath any of them, any lands or chattels, in my bailiwick, whereof, or whereby, I can distrain them, or any of them, as within I am commanded, nor are they, or any of them, found in my bailiwick. The residue of the execution of this writ appears in a certain inquisition hereunto annexed.

The answer of, &c.

Middlesex, } An inquisition indented, taken at, *The inquisition.*
to wit. } &c. on the day of in
the 39th year of the reign, &c. before me *A. B.*
esq; and *C. D. esq;* sheriff of the said county, by
virtue of his majesty's writ to me the said sheriff
directed, and to this inquisition annexed, to enquire
of certain matters in the said writ specified, by the
oath of *A. B., &c.* (the jurors names) honest and
lawful men of the bailiwick of me the said sheriff,
who upon their oath say, that to the knowledge of
them the said jurors, the several persons in the
schedules to the said writ annexed named, or any
of them, had not any lands, or tenements, in the
bailiwick of me the said sheriff, on the several days
and years specified in the said schedules, in which
they, or any of them, first became indebted to his
majesty in the several sums exacted in the said
schedules, or ever after, until the day of
in the 39th year of his majesty's reign,
(the

(the time of issuing the said writ hereto annexed,) and the jurors aforesaid, upon their oath aforesaid, further say, that they know not, whether any of the said several persons be dead, or on what day, or in what year, or where they, or any of them died, nor had the said several persons deceased, or any of them, to the knowledge of them the said jurors, in the bailiwick of me the said sheriff, any goods, or chattels, on the several days and years in which they, or any of them died; nor had the said several persons deceased, or any of them, to the knowledge of them the said jurors, any lands, or tenements, in the bailiwick of me the said sheriff, the several days and years in which they, or any of them, first became indebted to his majesty in the several sums charged upon them in the said schedules, or ever after, until the said day of in the 30th year aforesaid, therefore the said jurors say, they cannot extend any such lands, or tenements, as aforesaid, as by the said writ is commanded, nor can I the said sheriff take, or seize, any such lands or tenements, goods or chattels, as aforesaid, into his majesty's hands, as by the said writ I am commanded. In witness, &c.

I think there is a process against clergymen for the arrears of the tithes, or first fruits, which may be returned thus.

If no goods on the parsons process.

I hereby certify, that the several persons in the schedule to this writ annexed, have not, or hath either of them any goods or chattels, lands or tenements, in my bailiwick, whereby I can distrain them, or any or either of them, as within I am commanded, nor are they, or is either of them, found in the same. The answer of, &c.

If some are not found, and some are, return thus.

I humbly certify, that *A. B.* clerk, and *G. H.* clerk, two of the persons named in the schedule to this writ annexed, are not, nor is either of them, found in my bailiwick, "and I further certify, that
 "by virtue of this writ to me directed, I have attached
 "the rest of the several persons in the schedule to this
 "writ annexed named, whose bodies I have before the
 "said

"said barons at the time and place within mentioned,
"as within I am commanded."

Middlesex, } *A. I.* and *G. K.* esq; sheriff of the Warrant to levy
to wit } county aforesaid, to *C. K.* my bailiff, debts on the pipe
greeting: By virtue of his majesty's summons of process.

the pipe, to me directed, I command you, that of
the several persons in the schedules hereto annexed
named, in my bailiwick, you collect and levy the
several sums of money therein respectively charged
on them, due to his majesty, so that I may have
those monies before the barons of his majesty's
exchequer, at *Westminster*, on the morrow of *All* Add a copy of
Souls next to come. Hereof fail not. Given, &c. the schedule.

Middlesex, } *A. I.* and *G. K.* esq; sheriff of the Warrant to the
to wit } county aforesaid, to *W. K.* my bailiff, officer to collect
for this purpose only greeting. By virtue of his post fines and aid
majesty's writ of summons of the green wax to me rents.

directed, I command you, that of the several per-
sons in the schedule hereunder written named, in
my bailiwick, you collect and levy the several
sums of money therein respectively charged on
them, due to his majesty, so that I may have those
monies before the barons of his majesty's exchequer,
at *Westminster*, on next to come. Hereof
fail not. Given, &c.

The schedule to the warrant is taken from the
schedule to the writ.

As before, I command you, that you distrain, the On the distringas
several collectors in the schedule annexed named, against collec-
by all their lands, and chattels, in my bailiwick, so tors.
that they, or any for them, do not meddle there-
with, until I otherwise command you, so that I
may answer the issues of the said lands, and so that
the said collectors do appear before the barons of
his majesty's exchequer on, &c. to render an ac-
count to his said majesty, as in the said schedule
mentioned, dated, &c.

That you distrain the inhabitants of the parishes On distringas
in the schedules annexed named, by all their lands, against inhabi-
&c. as before. tants of parishes.

That

On the distringas
against divers.

That you omit not by reason of any liberty, &c. but enter the same and distrain the several persons in the schedules annexed named, by all their lands, &c. as before.

Excommunicato Capiendo.

Need not bring
in the body at
the day, but en-
ly return the
writ.

THE sheriff or other officer to whom the writ of *excommunicato capiendo*, or other process shall be directed, need not bring the body into the king's-bench at the day of the return, but shall only return the writ thither, with declaration briefly in what manner he hath served and executed the same. *Stat. 5 Eliz. c. 23. Dalt. 217.*

To be commit-
ted to gaol, if
taken.

If the sheriff take him, he is to be committed to prison without bail. *Ibid.*

Untrue return.

If he make an untrue return he is to forfeit to the party grieved, 40 l. *Ibid.*

Return of cepi
corpus.

I have taken the within named *J. D.* whose body remains in the prison of the lord the king of *N.* under my custody. The answer of, &c.

Elegit (a).

FOR the particulars of this writ as to the execution thereof. *Vide title Execution, p. 175.*

Sheriff not bound
to deliver a moiety
of each particu-
lar tenement, but
only certain
tenements mak-
ing in value a
moiety of the
whole.

Upon an ejectment being brought on an *elegit*, it appeared upon the inquisition, that it mentioned by name all the different farms and tenements of the defendants estate in the county, with their value, the number of acres in each, be the same more or less, the tenants names, yearly value, besides re-prizes, and the clear yearly amount of the whole; and then repeating the names of a certain number

Rastall 262.
Litt. Ent. 574.
Clif. 877.

* Jural Rules
relating to writs

(a) The extent and valuation of the lands and the pricing of the goods, must be by an inquest of twelve lawful men, and not by the sheriff; although the writ speaketh of no inquisition. 4 Co. 74. Dalt. 232.

of

of them, their number of acres, more or less, and yearly amount; it found that those particular farms and tenements *were a true and equal moiety of all the said lands and premises of the defendant in the county, "which moiety of the said lands and premises I the said sh-riff on the day of taking this in-*

quisition have caused to be delivered to the lessor of the plaintiff by the price and extent aforesaid, &c." Cowper objected, that the *elegit* had not been duly executed, and that the inquisition was void on the face of it, *for that a moiety of each farm ought to have been extended, and delivered to the lessor of the plaintiff, and not a certain number of distinct farms, amounting in value to a moiety of the whole.* The court held this return to be good; and Mr. J. Buller said, it is agreed, the moiety extended must be set out by *metes and bounds*; I take the meaning to be, a moiety in value; which is ascertained by the jury. *Postea to plaintiff. Vide Dalt. 135. Vide 1 Salk. 563. 1 Sid. 91. Cro. Car. 319.* which shews, that the inquisition and return are good, although separate lands have been extended, provided it does not appear that they amount in value to more than a moiety of the whole. *Dea v. Lord Abingdon. Dougl. Rep. 475.* The charge to the jury on the taking the inquisition, *fs. 175.* Sheriff to impanel a jury, &c.

Carth. 453.

The execution of this writ appears in the inquisition hereunto annexed. The answer of, &c.

Return to an *elegit*.

Kent (ff.) An inquisition indented, taken at the house of J. K. called by the name or sign of the *White-hart Inn*, in *street in Maidstone* in the said county, on the *day of* in the 39th year of the reign of our sovereign lord George the third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, and so forth, before me S. C. esq. Sheriff of the said county, by virtue of his majesty's writ to me directed and hereunto annexed, on the oath of (here name the twelve jurors) good and lawful men of my bailiwick, who being sworn and charged upon

The inquisition.

upon their oath say, that *C. D.* in the said writ named, on the day of in the year of the reign of his present majesty, on which day the judgment in the said writ specified was given (a) against the said *C.* was, and on the day of taking this inquisition is seized and possessed (b) of and in the several goods and chattels following, that is to say, (here set forth the goods) as his own proper goods and chattels, and the said jurors do appraise and value the same, at the sum of 50*l.* which said goods and chattels I have caused to be delivered to the said *A. B.* in the writ named, to hold to him as his own goods and chattels, in part satisfaction of the debt and damages in the said writ mentioned; and the jurors aforesaid on their oath aforesaid, further say, that the said *C. D.* in the said writ named, at the time of giving the said judgment in the said writ specified, had not, nor on the day of taking of this inquisition hath, any other or more goods or chattels, or any lands or tenements, in my bailiwick, to the knowledge of the said jurors, which may or can be extended, or appraised. In witness whereof as well I the said sheriff as the said jurors to this inquisition have set our hands and seals the day, year, and place above mentioned.

If lands, and no
goods taken.

Was, and on the day of taking this inquisition is, seized in his demesne as of fee, of and in a certain messuage or tenement, stable and brew-house, with the appurtenances, situate in, &c. in the said county, and now in the tenure or occupation of *A. S.* at the clear yearly rent of 14*l.* in all issues beyond reprises; and also of and in a certain other messuage or tenement, situate in, &c. in the said county in the occupation of *W. S.* of the clear yearly value of

(a) In all returns of this or any other nature, the words of the writ ought to be pursued. Dalt. 543.

(b) After the jury have found the parcels and appraised them, the sheriff must be sure to deliver to the plaintiff just a moiety, according to the appraisement of the jury, and no more; for if he returns more or less it is void. Dalt. 548.

8*l.* in all issues beyond reprises; and also of and in a certain other messuage or tenement, yard and premises in the *High-street*, in *S.* aforesaid, now in the occupation of *T. A.* of the clear yearly value of 6*l.* in all issues beyond reprises; and also of and in a certain other messuage, &c. in, &c. of the clear yearly value of 7*l.* in all issues beyond reprises; and also, &c. of the clear yearly value of 50*s.* in all issues beyond reprises; and also of and in a certain other small messuage or cottage adjoining to the last mentioned messuage in *S.* aforesaid, now in the occupation of *W. W.* of the clear yearly value of 50*s.* in all issues beyond reprises; and the jurors upon their said oath further say, that the said messuage or tenement, stable, brew-house, out-buildings, yard, garden, and premises in *S.* aforesaid, in the occupation of the said *G. H.* of the yearly value of 14*l.* and the said messuage, yard, and premises in *S.* aforesaid, in the occupation of the said *T. A.* of the yearly value of 6*l.* are a true and equal moiety of all and singular the said lands, tenements, and hereditaments of the said *C. D.* in the said writ named, and which said moiety I the said sheriff, on the day of taking this inquisition, have caused to be delivered unto the said *A. B.* in the said writ named, at the reasonable price and extent aforesaid, to hold to him and his assigns as his free tenements, according to the form of the statute in that case made and provided, until the debt or damages in the said writ mentioned shall be thereout fully levied as by the said writ I am commanded; and the said jurors upon their said oath further say, that the said *C. D.* in the said writ named, at the time of the rendition of the said judgment in the said writ specified, had not, nor on the day of taking this inquisition hath, any goods or chattels, or any other or more lands or tenements in my bailiwick, to the knowledge of the said jurors. In witness whereof, as well I the said sheriff, as the said jurors, have to this inquisition

What sheriff
may return.

tion set our hands and seals, the day and year, and at the place above written.

The sheriff may to this writ return *nihil*, or that he hath extended the land of the defendant, but that he cannot deliver the same to the plaintiff, for that another had the same in extent before. *Dalt.* 233. 125.

Exigent and Proclamation.

THE writ of *exigent* commands the sheriff to cause the defendant to be required from county court to county court, (or from hustling to hustling, if in London) that is at five successive county courts (or hustings), until he be outlawed, if he do not appear, and if he appear, to take him, &c.

If there be not five county courts, or hustings, between the *teste* and return of it, there issues an *exigent de novo*, grounded upon the sheriff's return to the former writ, with a clause (from whence it is called an *allocatur exigent*) directing the sheriff to allow the several county-courts, at which the defendant has been already required, and demanding him again to appear. *Exigents* are to be proclaimed five county days, one after another, and the proclamation in open court, once in the open sessions, and once at the parish church door, where the defendant doth or lately did dwell, that he appear and yield and answer to the law, or else that he shall be outlawed; and if he appear, the sheriff is to take and imprison him; if not, he records his default each court day; if he do not appear the 5th court day, then the coroner shall give judgment; for the form of which see title *County-court*.

Upon the return of the *exigent*, it must appear, that it was by the judgment of the coroners, (for they be judges) otherwise it is error. *Dalt.* 236 cites 21 H. 7. 33. Co. Lit. 288. And he shall be called by the sheriff on the *exigent*, at five county-court days, to answer to the law, and
if

if he come not within that time, he is to be returned outlawed.

And no county-court ought to be omitted, but when that the proclamation begins, the sheriff ought to pursue the same at every county after, without omission. *Pl.* 37.

No county court to be omitted.

The return of an *exigent* shall be void, by reason of uncertainty, as where the sheriff returns the *exigent*, *quod ad comit. Lancaster. tent. ibidem, &c.* when it should be, *ad comitat. Lancaster. tent. apud Lancast.* (or at some other certain places, whereto *ibidem* might have relation). So the sheriff returneth the writ thus. At my county-court held at the castle of Oxford, &c. and sets not down in what county. *Dalt.* 237.

Return of an *exigent*, void for uncertainty.

So the sheriff returneth, that he made proclamation at his county-court, held *tati die*, and shewed not what year. *27 H. 8. Br. Ret.* 3.

If sheriff return not the year on proclamation, bad.

If the party brings a *superfedeas* to the *exigent*, and delivers it to the sheriff, the outlawry shall not be pronounced. *Dalt.* 238.

Superfedeas c. me, outlawry not to be pronounced.

If the defendant come in at any of the five counties, the sheriff is to take and imprison him. But if he comes not, then the sheriff with the assistance of the coroner at the least, is to pronounce him outlawed. *Finch*, 346. and sheriff to return same.

If defendant comes in at any of the five counties, sheriff may take him.

Upon an *exigent*, a return was made, that the party was dead, and held not good, for the sheriff hath no authority by the *exigent*, but to call the party from county to county, to appear, and answer to the law, and if he appear, then to take and imprison him. *Dalt.* 239.

Return of party dead, not good.

The sheriff may return, that the coroners were absent, on the *quinto exact'*, therefore he could not proceed. Or that no coroner was there but one, who refused to pronounce the outlawry. *Lib. intrand.* 334, 335, 336.

May return coroners absent, or no coroner there, but one who refused.

Upon an indictment before justices of the peace, if the *exigent* shall be returned, *quarto exactus*, and that

On indictment,

that he cannot call the party any more for shortness of time, it seems to be a good return. *Crom.* 149, 150.

No county-court held.

That there was no county-court held from the receipt of the writ, to the day of the return. *Dalt.* 240.

When superfe-deas may be returned.

A superfe-deas may be returned by the sheriff before the fifth exaction to any one of the defendants in the exigent, and the exaction against the others, which the sheriff allows and ceases to proceed against him who is superfeded, by stating, that he has ceased from the execution of the writ as against him who is superfeded; having received his majesty's writ for that purpose. *Dalt.* 336.

Proclamation.

In addition to the exigent, a writ of proclamation is introduced by the *stat.* 6 H. 8. c. 4. But this writ is at present governed by the *stat.* 31 El. c. 3. s. 1. which enacts, That in every action personal, wherein any exigent shall be awarded, out of any court, a writ of proclamation shall be awarded out of the same court, having day of *teste* and *return* as the said writ of exigent shall have; directed and delivered of record to the sheriff of the county, where the defendant at the time of the exigent so awarded, shall be dwelling; which writ of proclamation, shall contain the effect of the same action. And the sheriff to whom such writ of proclamation shall be delivered, shall make three proclamations; one in open county-court, one other at the general quarter sessions of the peace in those parts where the party defendant, at the time of the exigent awarded, shall be dwelling, and one other, one month at least before the *quinto exactus*, by virtue of the said writ of exigent, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling, at the time of the exigent so awarded; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid, of the parish in the same county, and next adjoining to the place of the defendant's dwelling; and

and upon a *Sunday* immediately after divine service and sermon, if any sermon there be; and if no sermon there be, then forthwith after divine service; and that all outlawries had and pronounced, and no writs of proclamation awarded and returned, according to the form of this statute, shall be utterly void. 31 *Eliz. c. 3. s. 1.*

Whensoever any writ of *exigent* shall be awarded in any action in the *king's bench*, or *common pleas*, against any person dwelling in *Wales*, *Lancashire*, or *Cheshire*, or *city of Chester*, one writ of proclamation shall also be awarded, &c. and every sheriff, &c. shall make proclamation of the said writ of proclamation according to the tenor thereof, and true return thereof as the writ requires. 1 *Ed. 6. c. 10. s. 2.*

Exigent in
Wales, Lancas-
ter, Cheshire or
Chester, how to
proclaim.

Writs of proclamation and *exigent*, against *Durham*, any person dwelling within the county palatine of *Durham*, shall be directed to the bishop (or *chancellor*) of *Durham*, &c. And the said bishop, &c. shall by his mandate directed to the sheriff of the said county palatine, cause proclamation to be made of the same, according to the tenor of the same writ, and make returns into such courts as the tenor requires. 31 *Eliz. c. 9.*

In the *hustings* there are two courts, held distinctly, and having different jurisdictions, one called the *hustings of pleas of land*, and the other called the *hustings of common pleas*.

Court of hust-
ings in London.

The court of *hustings* is now held before the lord mayor, aldermen, and sheriffs, who are the judges, and the recorder sits with them to assist, and to pronounce the judgment of the court.

Where held be-
fore.

All judgments upon *outlawries* in causes where the *venue* is laid in *London*, are pronounced in the court of *hustings*. The proceedings in such a case are had either in the *hustings of pleas of land*, or *common pleas*, which happens first after coming of the *exigent*, or is most convenient to the parties, but having been begun in *one division* of the court, the *subsequent* proceedings, must be continued and

As to outlaw-
ries.

finished there. *Emers.* 22. As for instance, if you begin with *pleas of land*, you must continue them. So if you begin with *common pleas*.

When the court is held.

The court is held on *Tuesday* in every week, (with an exception of certain feast days on which if they happen to fall on a *Tuesday*, it cannot be held,) and an outlawry may be completed earlier in *London* than any other county; but it never happens that there are five huffings between the *teste* and return of the *exigent*.

In *London* 14 days between two huffings, will be well. 2 *Leon.* 14.

Return of an exigent in London.

At the huffings of common pleas, holden in the *Guildhall* of the city of *London*, on next, after the feast of *St. Dunstan* the bishop, in the year of the reign of his present majesty, the within-named *J. S.* was a first time demanded, and did not appear: At the huffings of common pleas, holden in the *Guildhall* of the city of *London* aforesaid, on next after the feast of in the year above written, the within-named *J. S.* was a second time demanded, and did not appear: At the huffings of common pleas, holden in the *Guildhall* of the city of *London* aforesaid on next after in the year above-written, the said *J. S.* within-named, was a third time demanded, and did not appear: The answer of, &c.

Return to the *Writ*.

At the huffings of common pleas, holden in the *Guildhall* of the city of *London*, on next, after the feast of, &c. in the year of his present majesty's reign, the within-named *J. S.* was a fourth time demanded, and did not appear: At the huffings at common pleas, holden in the *Guildhall* of the city of *London* aforesaid, on next after the feast of, &c. in the year aforesaid, the within-named *J. S.* was a fifth time demanded, and did not appear. Therefore the said *J. S.* is outlawed. The answer of, &c. (a)

(a) If two persons be in the writ, you will return, that they did not appear, nor did any or either of them appear (in each enactment).

By

By virtue of this writ to me directed, at my county-court of *Middlesex*, holden at, &c. in and for the said county of *Middlesex*, on the day of _____ in the 39th year of the reign of our sovereign lord *George* the third, now king of *Great Britain*, &c. the within-named *C. D.* was a first time demanded, and did not appear, and at my county-court of *Middlesex*, holden at the same place in and for the said county, the day of _____ in the year aforesaid, the said *C. D.* was a second time demanded, and did not appear, and at my county-court of *Middlesex*, holden at the same place, in and for the said county, the day of _____ in the year aforesaid, the said *C. D.* was a third time demanded, and did not appear. The answer of, &c.

Return of an exigent in *Middlesex*.

The sheriff must return the day of the month and year of the king to every *exactus*; and therefore, if the day and year of the king be inserted in *first*, *second*, *third*, and *fifth* *exactus*, but omitted in the *fourth*, it is erroneous, and shall not be supplied by intendment, 2 *Roll. Abr.* 802. 2 *Hal. P. C.* 203. So if there be less than a month between the first and second *exactus* it is erroneous. 2 *Roll.* 803. It must shew where the county-court was held in each exaction. 2 *Hal. P. C.* 203.

Must return the day and year of king to every *exactus*.

By virtue of the within writ to me directed, I caused the within-named *C. D.* to be proclaimed three several days, according to the effect of the within-mentioned statute, as I am within commanded. The answer of, &c.

Return on the writ of proclamation.

Return of proclamation that they were made as by the writ commanded, good. *Barnes*, 322. It need not state that the defendant did not appear. 4 *Term Rep.* 541.

General return good.

By virtue of this writ to me directed, at my county-court of *Middlesex*, holden at, &c. in and for the said county of *Middlesex*, the day of _____ in the 39th year of the reign of our love-

Return on the allocatur exigent.

(a) In *London*, naming the coroners not usual, 2 *Roll.* 802. 45. *Cro. Jac.* 531. pl. 22.

Judgment must
be given by the
coroners Dyer
223. B^o. Ceron.
166. 3 Inst. 212.

Before fifth ex-
action, sheriff
goes out of office,
how to return.

New sheriff's
return.

If of a woman
outlawed.

Superfedeas.

Sheriff's return
on receipt of
superfedeas.

reign lord *George* the third, now king of *Great Britain*, &c. the within-named *C. D.* was a fourth time demanded, and did not appear, and at my county-court of *Middlesex*, holden at the same place in and for the said county of *Middlesex*, the day of in the year aforesaid, the said *C. D.* was a fifth time demanded, and did not appear; therefore by the judgment of *A. B.* esq; and *J. D.* esq; his majesty's coroners of the said county, the said *C. D.*, according to the laws and customs of this realm is outlawed. The answer of, &c.

Before the 5th exaction of the defendant, frequently the old sheriff goes out of office, in *Middlesex*, as between *Trinity* and *Michaelmas* term, he goes out the 28th of *September*, and the return of the *allocatur exigent*, is not until the 3d of *November*, therefore return the exactions made at those courts held by the old sheriff in his name. The answer of, &c.

Before you return the next exaction, indorse the writ thus: This writ, as above indorsed, was delivered to me the under-named now sheriff of the county of *Middlesex*, by the above named late sheriff, at the time of his going out of office: And that afterwards and by virtue of the said writ at my county-court of *Middlesex*, holden at, &c. in and for the said county of *Middlesex*, the day of in the 39th year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. the within-named *C. D.* was a fifth time demanded, and did not appear: Therefore by the judgment of, &c. as before. The answer of the new sheriff.

Therefore by the judgment of, &c. the said *Ann Doe*, according to the law and custom of this realm is waived. *Dalt.* 240.

* If before the 5th exaction, a writ of *superfedeas* issues to the sheriff, then, upon the receipt of it, return the county-court held before the date of the writ of *superfedeas* received, and the exaction made, indorse on the *exigent* or *allocatur* thus, I have altogether

gether ceased from executing this writ, having received his majesty's writ of *superfedeas* for that purpose. The answer of, &c.

In the *Rex v. Wilkes*, the sheriff returned the writ of exigent executed and indorsed as follows. By virtue of this writ to me directed, at my county-court held at the house ——— known by the sign of the three tuns in *Brook-street, near Holborn, in the county of Middlesex*, the 12 day of *July*, in the fourth year of the reign of our sovereign, &c. the within-named *John Wilkes*, was the first time exacted, and did not appear, it went on in the same manner till the *quint' exact'*, viz. at my county-court held at the same place the ninth day of *August*, in the year aforesaid, the said *John Wilkes* was a second time exacted, and did not appear, and so in the same words, only changing the days, to the fifth *exclusive*: Therefore by the judgment of *Edward Umfreville* esq; and *Thomas Philips* gent. his majesty's coroners of the county of *Middlesex*, the said *John Wilkes*, according to the laws and customs of this realm, is outlawed.

Return of the sheriff on the writ of exigent. By precedent (tho' without good foundation at first), these technical words are necessary after the words at my county-court, must be added the name of the county as at my county-court of *Middlesex*, and after the word held, must be added for the county of *Middlesex*, at the house, &c. the want of these is error.

The objection was, that the first exaction does not appear to have been made in the county of *Middlesex*; nor any of the subsequent ones which are said to have been at the same place with the first. The words *near Holborn in the county of Middlesex*, do not import it's being in the county. Besides the time and place of the 2d 3d 4th and 5th exaction ought to have been particularly specified and described; and not by reference only to the first.

First objection.

Lord Mansfield—The return is by two men sheriff of *Middlesex*, at my county-court held, &c. so that two men making one officer, that is sheriff of *Middlesex*, say, at my county-court held in the county of *Middlesex*. To raise a doubt it is necessary to go out of the record into history and law. We know from thence, that the same man might be sheriff of two counties. Till 13th *Eliz.* one person was sheriff of *Somerset* and *Dorsetshire*; and

so Essex and Surry, of Oxford and Berks, of Nottingham and Leicestershire: And to this day the same person is sheriff of Cambridge and Huntingdonshire. Such a sheriff might by law hold in either, the county-court of the other. 6. H. 7. 15. In the case of the sheriff of Somerset, who was then also sheriff of Dorsetshire, my court in the county of Somerset was adjudged uncertain. 11. H. 7. 10.

But here it is impossible to raise a doubt, unless the sheriff of Middlesex may hold the court of another county, in Middlesex, "at my county-court" can only be the county-court of Middlesex. Two men sheriff of Middlesex, never were nor could be sheriff of any other county. The error is not assigned for any technical form of words; but, that it is not shewn, nor does it appear by the return, that the county-court was of Middlesex, and could not possibly be the court of any other county.

Secondly. As to the subsequent exactions. The objection is, that it is not shewn, nor does it appear, "where the court was held," at which he was exacted. The return having specified the place where the court was held at which he was first exacted, states severally the subsequent exactions, "at my court held at the same place." So that the whole doubt is "whether the same place includes the description of the place referred to," which cannot be a doubt in any language of the world. For in truth the doubt can be no other than "whether the same place mean the same place, that is, the place before described."

Second critical error. The only other error assigned and argued is, "it is no where expressly shewn, that the place called Brook-street, where the several county-courts are supposed to have been held, is in the county of Middlesex." The return says, "—at the house known by the sign of the Three Tuns in Brook-street, near Holborn, in the county of Middlesex." The counsel for the defendant contend, that the true construction ought to be, to

to apply "in the county of *Middlesex*," to *Holborn*, and not to *Brook-street*, and so make a stop at *Brook-street*. It is impossible for me to doubt, whether "*near Holborn*" is not part of the description of *Brook-street*; it could be added from no other reason. It could answer no end to say *near Holborn*; but as part of the name or description of this *Brook-street*, in contradistinction to some other *Brook-street*. It is immaterial what county *Holborn* is in; but the sheriff was bound to shew that *Brook-street* was in *Middlesex*. There is no law in this, it is a question of construction. All men can judge of it; and would treat with contempt, the judgment of this sovereign court if it could be founded upon so pitiful a prevarication. I am of opinion that according to the letter, sense and grammatical construction of the sentence, the court was held in "*Brook-street, near Holborn*," and that "*Brook-street, near Holborn*," lies in the county of *Middlesex*. From the precedents it appears that a series of judgments have required a technical form of words, in the description of the county-court, at which an outlaw is exacted: that after the words "*at my county-court*," should be added the name of the county; and after the word "*held*" should be added "*for the county of ———*" (naming it); whereas here the sheriff says "*at my county-court*," without adding, "*of Middlesex*," and he says "*held at the house, &c.*" without adding the words "*for the county of Middlesex*," after the word "*held*." Vide 2 Roll. Abr. 802. 2 Roll. Rep. 52. 1 Keb. 51. 51. 2 Keb. 128. 1 Vent. 108. 2 Show. 60. 3 Mod. 89. 1 Show. 309. These authorities stand uncontradicted and ought to avail the defendant. I beg to be understood that I ground my opinion singly upon the authority of the cases adjudged; which as they are on the favourable side, in a criminal case *highly penal*, I think ought not to be departed from, and therefore I am bound to say, that for want of these technical words, the outlawry ought to be reversed, which was ordered. 4 Burr. 2527.

Exigent and Proclamation on the Criminal Side.

The court of *king's bench*, either upon an indictment originally taken before them, or removed thither by *certiorari*, may issue process of *capias*, and *exigent*, into any county of *England*, upon a *non est inventus* returned by the sheriff of the county, where he is indicted, and a *testatum*, that he is in some other county.

Justices of gaol-delivery regularly cannot issue a *capias* or *exigent*, because their commission is to deliver the gaol *de prisonibus in ea existentibus*, so that those whom they have to do with are always intended in custody already. *Hal. P. C.* 199.

Justices of eyer and terminer may issue a *capias*, or *exigent*, and so proceed to the outlawry of any person indicted before them, directed to the sheriff of the same county; where they hold their sessions at common law.

But by stat. 53 *Ed. 1. c. 1.* They may issue process of *capias* and *exigent* to all counties in *England* against persons indicted or outlawed of felony before them,

Justices of peace may make process of outlawry upon indictments taken before themselves, or upon indictments taken before the sheriff, and returned to the justices of the peace by stat. 1 *E. 4. c. 1.*

Process must be
in the king's
name.

The process to the outlawry, *viz.* the *capias* and *exigent* must be in the *king's name*, and under the judicial seal of the king appointed to that court, that issues the process, and with the *teste* of the *chief justice*, or *chief judge* of that court or sessions.

If there be two
county-courts
only.

If an *exigi facias* be delivered to the sheriff, and there are but two county-courts, before the return, and the sheriff return the first and second *exactus & non comparuit*, and that there were no more county-days between the delivery of the writ to him, and the day of the return, there may issue a special *exigi facias*, with an *allocato comitatu*, if it be prayed after the return, and before any new county-

county-day be past, but if any county-day be *post*, between the last of the former county-days, and the return, no *exigi facias* shall issue with an *allocato comitatu*, but an *exigi facias de novo*, for the demand of the party must be at *five county-courts successively*, held one after another, without any county-court intervening. 22 E. 3. 11. a. So if after the second *exaltus* the offender render himself, and find mainprize, and at the day of the return make default, no *exigi facias* with an *allocato comitatu* shall issue, because three county-days intervened, but a *new exigent* and *capias* against the bail. Hal. P. C. 201.

The return of the outlawry must be certain, it must shew where the county court was held, and in what county, therefore *ad comitatum meum* &c. *tenet. apud C.* and says not *in comitatu prædicto* or *in com. S.* is erroneous. H. H. P. C. 203. 6 H. 7. 15. 11 H. 7. 10. a.

The sheriff must return the day of the month and year of the king to every *exaltus*. 2 Roll. Abr. 803. pl. 1.

It is said in 2 Hal. P. C. 204. that the name of the coroner must be subscribed to the judgment of outlawry at the *quinto exaltus* (a). M. 9 Car. Ethrington's case, upon an outlawry of felony, and it must also be subscribed by the name of their office, A. B. & C. D. coronatores, unless in London, where the mayor is coroner. 2 Roll. Abr. 802. Cre. Jac. 531.

Upon issuing any *exigent* out of any of the king's courts, against any person for a criminal matter, before judgment or conviction, there shall also issue a writ of proclamation, bearing the same tesse and return where the person in the record of proceeding is mentioned to inhabit, according to the form of 31 El. c. 3. which writ of proclamation, shall be delivered to the sheriff three months, before the return of the same. 4 & 5 W. 3. c. 22. s. 4.

Proclamation to be issued before judgment or conviction.

(a) Held the contrary in *Rex v. Tordell*, 4 Term Rep. 542. it requires the names of the persons by whom the outlawry was pronounced, but not to be subscribed.

The

Barrington's case, he was outlawed after a day given him in court, and before such day arrived.

The prisoner was outlawed on, 21 Feb. and the writ of proclamation required the sheriffs to proclaim him, so that he should be before the justices of the peace at the general sessions of the peace to be holden for the county aforesaid next after the first day of February next ensuing: And the return by the sheriffs to that writ was, that he had proclaimed the said George Barrington that he should be before his majesty's justices of the general sessions of the peace last within-mentioned. The next sessions of the peace were holden on the 25th of February; so that by the terms of the writ, and by the proclamation too, the prisoner had a day given to him to appear, till the 25th of February; and if he had appeared on that day, he would have complied with the requisition of that writ and have saved his default. But he was outlawed before that day came, viz. on the 21st of February, on that ground the court held, the outlawry bad. *Rex v. Barrington*, 3 Term Rep. 499.

In the *King v. Vandell and others*, on an indictment for sheep stealing, the sheriffs return to the exigent and proclamation, was fully argued on many exceptions. The return is stated on the record on the exigent as follows, and is well drawn.

The indictment was found at the assizes for Somerset, on which a *copias, alias, & pluries* issued, and were returned by the sheriff *non est inventus*; and a writ of *exigent*, and *proclamation*, also were issued to the sheriff of Somerset, who returned the exigent thus: I do hereby certify to the justices of our lord the king of oyer and terminer within-mentioned, that this writ was delivered to me, on the 28th day of December, in the 30th year of the reign of our sovereign lord George the third, king of Great Britain, &c. and that after the receipt of the said writ, and by virtue thereof at my county-court of Somerset, holden at *Ivelchester*, in and for the county of Somerset, within-written, on Wednesday, the 27th day of January, in the 30th year of the reign of our said lord the king, the within-named

John

Return of the exigent of the late sheriff.

John Vandell, James Vandell, and Joseph Vandell were first called, and did not appear, nor did any or either of them appear: And that afterwards at my county-court of *Somerset*, holden at *Ivelchester*, in and for the said county of *Somerset*, on *Wednesday*, the 24th day of *February*, in the 30th year of the reign of our said lord the king, the within-named *J. V.*, *J. V.*, and *J. V.* were a second time called, and did not appear; nor did any or either of them appear. The answer of *G. T.* sheriff of the county of *Somerset*; I do hereby certify to the justices of our said lord the king of oyer and terminer, within-mentioned, that this writ as it is above indorsed, was delivered to me the under-named present sheriff, of the county of *Somerset*, by the above-named late sheriff, at the time of his going out of his office; and that afterwards by virtue of the said writ, at my county-court of *Somerset*, holden at *Ivelchester*, in and for the county of *Somerset*, within written, on *Wednesday* the 24th day of *March*, in the 30th year of the reign of our said lord the king, the within-named *John Vandell, J. V.*, and *J. V.* were a third time called, and did not appear; nor did any or either of them appear. The answer of *I. S.* esq; sheriff of the said county of *Somerset*, I do hereby certify to the justices of our lord the king of oyer and terminer within-mentioned, that this writ was delivered to me on the 28th day of *March*, in the 30th year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. and that after the receipt of the said writ, and by virtue thereof, at my county-court of *Somerset*, holden at *Ivelchester*, in and for the county of *Somerset* within-written, on *Wednesday*, the 21st day of *April*, in the 30th year of the reign of our said lord the king, the within-named *John Vandell, J. V.*, and *J. V.* were a fourth time called, and did not appear, nor did any or either of them appear: And that afterwards at my county-court of *Somerset*, holden at *Ivelchester*, in and for the county of *Somerset*, on *Wednesday* the 19th day of *May*, in the

The return of
the present sheriff,

Return to the
allicatus,

The names of
the coroners
need not be sub-
scribed.

to return on T
the sheriff of

Return to the
first writ of pro-
clamation by
the late sheriff.

of the writ of
return

The answer of
the present
sheriff.

30th year of the reign of our said lord the king, the within-named *John Vandell, J. Y., and J. Y.* were a fifth time called, but did not appear, nor did any or either of them appear. Therefore by the judgment of *Daniel Rollett Scadding* gent. and *Peter Layng* gent. coroners of our said lord the king of the said county of *Somerset*, and according to the laws and customs of *England*, the said *J. Vandell, J. Y., and J. Y.* are outlawed, and each of them is severally outlawed. The answer of *J. S. sheriff of the said county of Somerset*.

I do hereby certify to the justices of our lord the king of oyer and terminer within-mentioned, that this writ was delivered to me on the 28th day of *December*, in the 30th year of the reign of our sovereign lord *George the third, king of Great Britain*; and so forth; and that after the receipt of the said writ, and by virtue thereof, at my county-court of *Somerset*, holden at *Welchbaster*, in and for the county of *Somerset*, within-written, on *Wednesday* the 27th day of *January*, in the 30th year of the reign of our said lord the king, I caused the first proclamation to be made in open court, in the said county, that the within-named *John Vandell, J. Y., and J. Y.* should render themselves to me, so that I might have their bodies before the justices of our lord the king within-written, at the next assizes, and general session of oyer and terminer and goal delivery, to be holden for the said county, to answer our said lord the king, concerning certain felonies, whereof they are indicted, as by this writ I am commanded; and the within-named *J. Y., J. Y., and J. Y.* are not nor are any or either of them found in my bailiwick. The answer of *G. T. esq; sheriff of the county of Somerset*.

I do hereby certify to the justices of our lord the king of oyer and terminer within-mentioned, that this writ, as it is above indorsed, was delivered to me the under-named present sheriff of the county of *Somerset*, by the above-named late sheriff, at the time of his going out of office. The answer of

of *J. S.* esq; sheriff of the said county of *Somerset*.

I do hereby certify to the justices of our lord the king of oyer and terminer within-mentioned, that this writ was delivered to me on the 28th day of *March*, in the 30th year of the reign of our sovereign lord *George* the third, king of *Great Britain*, and so forth, and that after the receipt of the said writ; and by virtue thereof, at the general quarter sessions of the peace of our lord the king, holden for the county of *Somerset*, at the city of *Wells*, in the said county, on *Wednesday* the 14th day of *April*, in the 30th year of the reign of our said lord the king, I caused the second proclamation to be made in open court, that the within-named *J. Y.*, *J. Y.*, and *J. Y.* should render themselves to me, so that I might have their bodies before the justices of our lord the king within-written, at the next assizes, and general sessions of oyer and terminer, and goal delivery, to be holden for the said county, to answer our said lord the king, concerning certain felonies, whereof they are indicted, as by this writ I am commanded; and that afterwards at the most usual door of the church of the parish of *Brompton Ralph* within-mentioned, on *Sunday* the 18th day of *April*, in the 30th year of the reign of our said lord the king, immediately after divine service and sermon, one month at least, before the within-named *J. Y.*, *J. Y.*, and *J. Y.* were a fifth time called, by virtue of a certain writ of exigent of our said lord the king, I caused the third proclamation to be made, that the within-named *J. Y.*, *J. Y.*, and *J. Y.* should render themselves to me, so that I might have their bodies before the justices of our lord the king within-written, at the next assizes to be holden for the said county, to answer our said lord the king, concerning certain felonies, whereof they are indicted, as by this writ I am commanded: And the within-named *J. Y.*, *J. Y.*, and *J. Y.* are not, nor are any or either of them, found in my bailiwick. The

Return to Grand
proclamation.

answer of J. S. Sheriff of the said county of Somerset.

It is not necessary that the sheriff add to his return, to each proclamation that the prisoners *did not appear* on 4 Term Rep. 541. But it is necessary to the return of the exigent. 2 Hal. P. C. 204.

The return of these proclamations were held to be good. 4 Term Rep. 541.

There was an objection to the return of the exigent, that the names of the coroners by whom the outlawry was pronounced, were not subscribed to the record. The court said, by law it is necessary, that it should appear by whom the outlawry was pronounced, and that they had authority to pronounce that judgment. It was never contended that the coroners must sign the judgment with their own hands; it does appear on the record by whom the outlawry was pronounced, and that they were the coroners, and consequently had authority to pronounce that judgment. *Ibid.* 541, 2.

The day and year must be stated by the sheriff in each exigent, if not, it is error.

Fourth exigent.

In the *King v. Almon*, the return to the writ of exigent was (after stating the two first exigents) afterwards at the husting, &c. on Monday next before the feast of the Saints Perpetua and Felicitas, &c. in the 30th year aforesaid, we caused to be exacted the said J. Almon, and he did not appear; and afterwards at the husting, &c. on Monday next before the feast of St. Edward the king, we caused to be exacted the said J. Almon, and he did not appear; and afterwards at the husting, &c. on Monday next, before the feast of the Saints Tiberius and Valerianus, in the 30th year aforesaid, we caused to be exacted the said J. Almon, and he did not appear, &c. Therefore, &c. The omission of the year of the reign, when the defendant was a fourth time exacted, was assigned for error, and the judgment reversed. For in a record of outlawry it is necessary to state the year of the king's reign, in which every transaction happened (a), tho' not

(a) Buller J. said, there is neither sense or reason in the objection, but according to the authorities it must prevail. 2 Roll. Abr. 808, pl. 8. is this case, 2 Hal. P. C. 203.

required

required in other records. *Buller J. Vide Hardn,*
6, 7. Croft's Case. 5 Term Rep. 202.

At my county-court of *Middlesex* holden at, &c. If he appear
 in and for the said county of *Middlesex*, on the *Dalt. 298.*
 day of in the year of
 the reign of our sovereign lord *George* the third,
 now king of *Great Britain*, &c. the within-named
C. D. was a first time demanded and appeared, and
 on the aforesaid day rendered himself into the prison
 of our said lord the king, of *Newgate*, in the county
 aforesaid, under my custody, whose body I have
 ready before the lord the king, at the day and
 place within mentioned, as within I am command-
 ed. The answer of, &c.

Extent.

THE king's debt shall, in suing out execution, King's debt to
 be preferred to that of every other creditor, be preferred.
 who hath not obtained judgment before the king
 commenced his suit. *Stat. 33 H. 8. c. 29.* The King's judg-
 king's judgment affects all lands, which the king's ment affects all
 debtor hath at or after the time of contracting his lands of his
 debt, or which any of his officers mentioned in officers.
Stat. 13 Eliz. c. 4. hath at or after the time of his
 entering in the office. So that if such officer of
 the crown aliens for a valuable consideration, the
 land shall be liable to be king's debt, even in the
 hands of a *bona fide purchaser*; though the debt due
 to the king was contracted by the vendor many
 years after the alienation. *10 Rep. 55, 56.*

An immediate extent against the king's debtor Immediate ex-
 teste'd after a distress for rent taken, although tent teste'd after
 justly due to the landlord, and an appraisement distress.
 of the goods and chattels made, but not sold, shall
 prevail against the distress. *Park. Rep. 112.*

So shall an extent teste'd on the day of the date of Extent on day
 an assignment under a commission of bankrupt. of assignment.
Ibid. 126, 127.

Debts either by specialty, or simple contract, What may be
 may be found and seised into the king's hands to found.
 the

the third degree, but not beyond. *Park. Rep.* 259, 260.

Immediate extents to be preferred to extents in aid.

Immediate extents shall be preferred according to the teste, and before extents in aid. *Ibid.* 281. And a second immediate extent, upon which evidence was offered to find the goods seised in aid, shall be preferred to a prior immediate extent, not offering such evidence. *Ibid.* 282.

If execution, and before ven. expon. an extent comes, cannot take those goods.

If execution be upon a judgment against the king's debtor, and before a *venditioni exponas*, an extent comes at the king's suit, those goods cannot be taken on an extent. 2 *Black. Rep.* 1294. *Park. Rep.* 260. 262. *Hard.* 27. 2 *Roll. Abr.* 159. The statute 33 *H. 8. c.* 39. *f.* 74. enacts, That the king's suits or process for recovery of his debts shall be preferred before the suit of any other person, so always, that the king's said suit shall be taken or commenced, or process awarded for the said debt, at the king's suit, before judgment given for the said other person or persons.

King's suits to be preferred, if before judgment of any other person.

Construction.

This statute is construed thus, that the former part of it is declaratory of the old prerogative law, the latter a new restriction of it, so that it shall not take place after judgment given for the subject. 2 *Black. Rep.* 1295.

Return of lands, and not of goods.

Upon an extent on a statute-staple, the sheriff returned the extent of the lands, and not of the goods, yet good. *Br. Tra.* 438.

May return non est inventus.

He may return *non est inventus*, and that he hath no goods or lands, or *cepi corpus*.

Or that none came to receive the land. *Lib. intrand.* 596.

Debtor, clerk. May return that he cannot make execution, &c.

That the debtor is a clerk. *Dalt.* 23. Also, upon this writ, the sheriff may return, that he cannot make execution, for that another hath those lands in execution by force of an *elegit*, or that another is in by descent, for that they are not to be put out of possession without a *seire facias*; *Fitz. Rel.* 112. *Execut.*

Extended the lands but not that he had delivered, bad.

Upon an *extendi facias*, on a statute-merchant, the sheriff returned that he had extended the lands; but

but did not return that he had delivered them to the plaintiff; whereupon it was moved that the sheriff should be amerced. *Fitz. Execution*, 38.73.

117.

An extent ought always to be by inquisition, and the sheriff without an inquisition cannot execute it. *Extent to be by inquisition.*

Cro. Jac. 566. pl. 9.

If the debtor have no moveables whereupon the debt may be levied, then shall his body be taken and kept in prison until he hath made an agreement, &c. 13 E. 1. *If debtor have no goods, then his body to be taken.*

And so soon as the debt is levied, the body of the debtor shall be delivered with his lands. *If taken, body to be delivered with his lands.*

4 Co. 67.

The sheriff may return that he hath extended the land of the defendant, but that he cannot deliver the same; for that another had the same in extent before. *Dalt.* 125. *May return extended lands, and cannot deliver, for another had the same in extent before.*

As to the Writ and how the Sheriff is to proceed.

By this writ the sheriff is commanded to take the body of the defendant, and also to seize his goods and chattels, lands and tenements, which were in his hands, at the time of the debt being due or after which are to be appraised to the full extended value, before he delivers them. *F. N. B.*

131.

If he take goods, &c. in his hands he is to summon a jury thereon of 12 men, who, upon an appraisement being taken, find the value, as also what other goods, lands, &c. he had at the time the defendant was indebted to the king, or at any time since; when the jury have found, the facts, the sheriff returns the writ, with the inquisition annexed, to the court of exchequer, who issue out a *venditioni exponas* for sale of such goods seized. There is always evidence laid before the jury to find on this writ. *To summon a jury if he takes goods.*

You shall well and truly inquire what lands and tenements, and of what yearly value, C. J. had in my bailiwick, on the day of in the

The oath of a juryman.

Take the words
of the writ.

39th year of the reign of his present majesty, on which day, he was found indebted to his majesty, or at any time since, and what goods and chattels, and of what sorts and values, and of what debts, credits, specialties, and sums of money, the said C. S. or any person or persons, to his use, or in trust for him, now hath or have in my said bailiwick and that you appraise such goods and chattels, so that I may extend, seize, and take the same into his majesty's hands, until his majesty shall be fully satisfied the sum of 1000*l.* due to his majesty, upon an extent, directed to me, teste'd the day of in the 39th year of his reign. *So help you God.*

Care to be taken
on the return.

Great care is to be taken on the return of the inquisition, as if lands are taken by the sheriff, houses, &c. that they be properly described, and how they came to be the defendant's property. The like if leases are seized. So of debts due to the defendant, either for goods sold, money lent, or had and received to his use. If bills or notes are seized and taken, they must also be particularly inserted, their dates, by whom drawn or indorsed, and how they became the property of the defendant.

Return to the
extent.

Indorse on the extent thus:—The within-named *I. B.* is not found in my bailiwick. The residue of the execution of this writ appears in the inquisition hereto annexed. The answer of, &c.

The form of the
inquisition.

Surry, } An inquisition indented, taken at the
to wit. } house of *I. L.* known by the name or
sign of the *Queen's-head Inn, St. Margaret's-Hill,*
in the borough of *Southwark,* in the said county,
the day of in the 39th year of
the reign of our sovereign lord *George* the third,
by the grace of God, of *Great Britain, France* and
Ireland, king, defender of the faith, &c. before me
T. S. esq; sheriff of the said county, by virtue of
his majesty's writ of extent to me directed, and to
this inquisition annexed, on the oath of *A. B.*
(here name the twelve jurors,) honest and lawful
men

men of my bailiwick, who being sworn and charged on their oath say, that *I. B.* in the said writ named, on the day of in the 39th year The title of the writ. afore said, was, and at the time of taking this inquisition is, possessed of the goods and chattels following; that is to say, (here state the goods taken from the inventory,) as of his own goods and chattels, and the said jurors do appraise and value the same at the sum of 30*l.*; all which said goods and chattels I the said sheriff have seised and taken into his majesty's hands: And the jurors afore said, upon their oath afore said, further say, that *U. P.* of, &c. is indebted to the said *I. B.* in 20*l.* upon the balance of accounts, and that *R. C.* of, &c. is indebted to the said *I. B.* in 50*l.* for goods sold and delivered to the said *R. C.* (here state who are indebted, and for what); all which said debts, sum and sums of money, I the said sheriff have taken and seised into his majesty's hands: And the jurors afore said, upon their oath afore said, further say, that the said *I. B.* on the day of issuing the said writ, was, and on the day of taking this inquisition is, seised in his demesne as of fee, of and in a certain messuage or tenement, with the appurtenances thereto belonging, situate and being in *Street*, in the parish of *C.* in the said county, and in the possession of *Richard Fenn*, of the clear yearly value of 40*l.* in all issues beyond reprises, which I the said sheriff have seised and taken into his majesty's hands; and that the said *I. B.* hath not any other or more goods, or chattels, debts, credits, specialties, or sums of money, or any other or more lands, or tenements, in my bailiwick, to the knowledge of the said jurors, which can be extended, appraised, or seised into his majesty's hands: In witness whereof, as well I the said sheriff, as the said jurors, to this inquisition have set our seals, the day, year, and place above-mentioned.

Return upon an extent that he has delivered such lands, if it does not say, *that there are no other lands*, is bad. *Brownl.* 37.

May return cepi.

The sheriff may return *cepi corpus* and the seizure of the lands, &c. *Dalt.* 233.

Non est invent.
&c.

He may also return *non est inventus, nec habet bona, nec habet terras*. *Ibid.* 234.

Poundage on Extents, &c.

Sheriff levying debts, &c. (except p. ft fines) due to the crown by process of the pipe by *levari facias* to have 12 d. per pound for the first 100 l. and 6 d. for every 20 s. above that sum, and on process by *fi. fa.* and extent to have 1 s. 6 d. per pound, for the first 100 l. and 1 s. per pound above, provided he answer the same in his accounts by a day to be fixed by warrant of the barons.

By *stat. 3 Geo. 1. c. 15.* it is enacted, That all sheriffs who shall levy any debts, duties, or sums whatsoever, *except post fines*, due to the king's majesty, his heirs or successors, by process to them directed upon the summons of the pipe, or green wax, by *levari facias* out of the court of *exchequer*, shall have an allowance of 12 d. out of every 20 s. for any sum not exceeding 100 l. levied or collected; and 6 d. only for every 20 s. above the first 100 l. and for all debts, duties, and sums of money, (*except post fines*), due to his majesty, his heirs and successors, by process of *feri facias*, and *extent*, issuing out of the court of *exchequer*, 1 s. 6 d. out of every 20 s. not exceeding 100 l. levied; and 12 d. only for every 20 s. over and above the first 100 l.; provided, that such sheriff shall answer the same upon his account by the general sealing-day of such term in which he ought to be dismissed the court, or in such time to which he shall have a day granted to finish his said accounts, by warrant signed by the lord chief baron, or one of the barons of the coif of the said court, for the time being. *f. 3.*

When a sheriff by *exchequer* process seizes or extends goods or personal estate for the king's debts, and dies, or is superseded before a vendi-

That when any sheriff shall, by process out of the *exchequer*, seize or extend any goods, &c. into the hands of his majesty, his heirs or successors, for any debts due to the crown, and shall die, or be superseded before a writ of *venditioni exponas* be awarded to him for sale, or before such sheriff hath made actual sale, and a writ shall afterwards be

be awarded to a subsequent sheriff, who shall make sale, &c. of such goods, chattels, and personal estate, so seized by such preceding sheriff, in case the barons of the *exchequer*, if then sitting, and if not sitting, the said barons, or any one of them, being of the degree of the coif, shall order and apportion poundage due for such seizure and sale, betwixt such preceding and subsequent sheriffs, as to him or them shall seem meet, with regard to the expence and trouble each sheriff hath had, or shall have, in the execution of the said process. *Stat. 9.*

No sheriff, &c. in levying debts due to the crown by process out of the *exchequer*, shall take any fee, on pretence of such levying, &c. (except four pence for an acquittance,) which such officer is to give to the person on whom such debt, &c. is levied, and the bailiff, &c. receiving such debt, &c. shall account for the same to the sheriff, and may require an acquittance from such sheriff without fee; from which debts, the sheriffs shall discharge the debtors, by totting and answering the same on their accounts in the *exchequer*; and if any sheriff, &c. shall *nihil*, or not duly answer the crown, any debt so levied, he shall forfeit treble damages to the party grieved, and double the sum which shall be decreed to the party grieved by the court, on complaint and proof of such abuse before the barons, in such summary way as to them shall seem meet; and if any sheriff, &c. shall demand any money from any person from whom any debt is payable to the crown by process out of the *exchequer*, on pretence of executing the process, or in respect of fees due for collecting the same; or if any one of the officers aforesaid shall demand any sum for forbearing to levy such debts, written out to them, by the said process, every such offender shall be adjudged guilty of extortion, and being convicted, shall forfeit treble damages and costs to the party grieved, and double the sum extorted, to be decreed by the barons on complaint and proof, in a summary

tion: expence awarded for sale, and the subsequent sheriff makes sale, &c. the *exchequer* court, if sitting, or if not, any baron, may settle and apportion the fees or poundage between the preceding and subsequent sheriffs. Not to take fees for levying the king's debts.

Extortion.

way; provided such conviction be within *two years* after the offence. *Stat. 3 Geo. 1. c. 15. s. 13.*

And if a sheriff, &c. shall nihil or not answer such debts collected, he forfeits treble damages and double what is *nichilled*, to be ordered by the court of *exchequer*, on complaint and proof, in a summary way; and if a sheriff or officer demand any money for executing such process, or (as fees) for collecting such debts, or for not levying or forbearing to levy any debt to the crown so written in process, and thereof convicted, he is guilty of extortion, and forfeits treble damages and costs, and double the sum extorted.

But the sheriff may take such poundage as given by this act,

And in case any sheriff, &c. shall *nichil* or not duly answer to the crown, any debt, or sum, so levied, collected, or received, such sheriff, &c. for every such offence shall forfeit treble damages to the party grieved, and double the sum so *nichilled*, or not duly answered as aforesaid; which damages and penalty shall be ordered, decreed, and given to the person grieved by the court of *exchequer*, upon complaint and proof of such abuse, as aforesaid, made and exhibited before the barons of the said court, in such short and summary way and method as to them shall seem meet. And in case any sheriff, &c. shall presume to demand, take, or receive any sum of money, of any person whatsoever, from whom any debt is or shall be due and payable to the crown, by process out of the court of *exchequer*, for or in respect, or upon pretence of fees for collecting or receiving the same, contrary to this act; or if any of the officers, &c. shall demand, take, and receive any sum for not levying or forbearing to levy any debts, duties, or sums of money which are or shall be due to his majesty, his heirs and successors, and written out to them, or any of them, by the process aforesaid, in every such case, every person so offending, and convicted, shall be adjudged guilty of extortion; and all persons, being thereof lawfully convicted, shall forfeit for every such offence treble damages and costs to the party grieved, and double the sum so extorted, which shall be ordered, decreed, and given by the barons of the *exchequer*, on complaint and proof made and exhibited before them, in such short and summary way and method as to them shall seem meet; provided such conviction be had and made within *two years* after such offence committed. *s. 14, 15.* Provided, that nothing shall be construed to deprive any sheriff of such poundage or allowance as is allowed and given to them by this act, or of such

such poundage, allowance, or reward, as may hereafter be made, allowed, and given to them, by warrant or order from the lord high treasurer, or commissioners of the treasury, chancellor of the exchequer, or barons of the court of exchequer for the time being, for or in respect of any extraordinary service to the crown, that may happen to be performed by them: but that the said sheriffs, shall and may enjoy the full benefit and advantage of such poundage, allowance, and reward, without any impeachment or molestation whatsoever.

or by warrant of the lord treasurer, &c. for any extraordinary service to the crown performed by him.

Stat. 15.

That whatever orders or decrees shall be made by the barons, for costs, damages, and penalties, in the cases aforementioned, or of any of them, or in any other case in this act hereafter mentioned, by virtue of this act, in such short and summary way and method as is before directed and prescribed, shall have the same effect as any other order or decree of the same court; and the same costs, damages, and penalties shall be raised, levied, and obtained, by such process, ways, and methods, as are used in the said court to enforce a compliance with any other orders or decrees of the same court. *Stat. 16.*

All orders made by the barons for costs, &c. in a summary way, to have the same effect as any other order of the court; and such costs, &c. raised by such process to enforce a compliance with other orders.

Poundage was allowed the sheriff out of 100*l.* fine (imposed after conviction on indictment of battery in *K. B.*) levied upon a *fi. fa.* because the barons always make such allowance after monies paid there. *Skin. 12. pl. 13. 2 Jones, 185.*

Poundage was allowed out of 100*l.* fine.

The sheriff may retain the poundage, without waiting for the allowance of it, upon his account, *Burb. 305. Park. Rep. 177.*

May retain poundage.

Inquiry.

THIS writ is directed to the sheriff of the county where the action is laid, to inquire by a jury what damages the plaintiff hath sustained by means of the premises mentioned in the writ.

The sheriff's command by this writ.

To summon a jury.

On this writ the sheriff is to summon a jury of 12 men, who is to find such damages, and he returns the writ, and inquisition so found to the court.

Oath to the foreman.

You shall well and truly inquire and assess the damages between the parties, and a true verdict give according to the evidence. *So help you God.*

To the rest of the jury.

The same oath the foreman hath taken on his part, you, and each of you shall well and truly observe and keep on your part. *So help you God.*

What proof.

If a writ of inquiry issues upon confession of the action, in trespass for taking goods, the plaintiff need not prove property of the goods, but only the value. *Str.* 612.

Fraud not to be given in evidence.

Defendant shall not give evidence of a fraud, for he has admitted the contract as stated. *Ibid.* *Yelv.* 152.

In *indebitatus assumpsit*, the plaintiff must prove his debt. *1 Vent.* 347.

Need not prove hand-writing to bills or notes.

On promissory note or bill, need not prove the hand-writing, but it should be produced to see if any money is indorsed as paid off. *3 Wils.* 155. *Str.* 1149.

Nor on any contract in writing declared on.

So it was ruled, that if the plaintiff declare on any contract in writing made by defendant, the hand-writing need not be proved on inquiry, for by the judgment he admits the contract as stated, but the contract must be produced.

No assets.

Executors or administrators shall not give in evidence that he has no assets. *Mod. Caf.* 308.

Interest.

The jury may give interest, on note, bill of exchange, and money lent. *Barnes*, 228.

Policy of insurance what need be proved.

In an action on a policy on a foreign ship, when there is a stipulation that the policy shall be sufficient proof of interest, if there is judgment by default, the plaintiff on the writ of inquiry need only to prove the defendant's subscription to the policy without giving any evidence of interest. In this case defendant had underwritten 300*l.* and jury gave the whole without proof of the amount or value, or any evidence except the hand-writing

writing of defendant to the policy. In cases where there is no necessity for a writ of inquiry, that proceeding is of use, when the plaintiff goes for interest, which the jury assesses in the name of damages. *Thelluson v. Fletcher, Dougl.* 315.

If a deputy is appointed to execute a writ of inquiry, it must be under the seal of office. *Barnes,* 232. A verbal appointment bad. 413. Two cannot be appointed for this purpose.

Deputy to be appointed under seal.

This is an inquest of office to inform the conscience of the court, who if they please may themselves assess the damages. *3 Wils.* 61. 62. *2 Wils.* 372. 374. *3 Wils.* 175.

Inquest of office.

Upon a writ of inquiry directed to the sheriff, he cannot say *Mandavi ballivo*, &c. for he is to execute it at any place within his county. *Hob.* 83.

Mandavi ballivo bad.

The sheriff may adjourn the writ of inquiry for want of evidence. *Stra.* 1259. *Cas. K. B.* 571.

Adjournment.

Surry, ff. An inquisition indented, taken at the house of _____ called or known by the name or sign of _____ in the said county _____ on the _____ day of _____ in the 39th year of the reign of our sovereign lord George the third, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, &c. before me A. B. esq; sheriff of the county aforesaid, by virtue of the king's writ to me directed, and to this inquisition annexed, on the oath of A. B. and C. D., &c. (here set out the names of the twelve jurors,) honest and lawful men of the said county, who being sworn and charged on their oath say, that R. F. in the said writ named, by reason of the premises in the said writ mentioned, say, that E. F. in the said writ named, hath sustained damages, besides his costs and charges about his suit in that behalf laid out, to 100 l. and for those costs and charges to 20 s. In witness whereof, as well I the said sheriff, as the said jurors, have set our seals, the day, year, and place above mentioned.

Inquisition on a writ of inquiry.

Indorse

Return.

Indorse on the writ thus:—The execution of this writ appears in the inquisition hereto annexed. The answer of, &c.

Return to an inquiry in replevin, upon the Stat. of 17 Car. 2.

Middlesex, } An inquisition, &c. (as before,) good to wit. } and lawful men of my bailiwick upon their oath say, that there was due, and owing from the within-named *A. B.* to the said *C. D.* for the rent aforesaid, at the time in the said *avowry* mentioned, and of the distress taken, the sum of 20 *l.*; and that the goods and chattels distrained as in the writ to this inquisition annexed, mentioned, according to the value thereof, are worth, to be sold, the sum of 40 *l.* and they assess the damages of the said *C. D.* by means in the said writ mentioned, besides his costs and charges about his suit in that behalf laid out, to the sum of 40 *l.* and for his costs and charges aforesaid to the sum of 20 *s.* In witness, &c.

When the goods are inanimate, say, "worth so much; if animate, of the price of 20 *l.*"

The execution of this writ appears in the inquisition hereto annexed. The answer of, &c.

Inquisition taken before the chief justice of the C. P.

Middlesex, } An inquisition indented, taken at to wit. } *Westminster-Hall*, in my county, in the great hall of pleas there, on, &c. before me, Sir *R. T.* knt. and *B. C.* esq; sheriff of the said county, by virtue of the king's writ to me directed, and to this inquisition annexed, in the presence of *Lloyd* lord *Kenyon*, his majesty's chief justice of his court of king's bench, in the said place where the said court is usually holden there, on the oath of (the same as in others).

It is laid down, that the *sheriff* is the *judge* on a writ of inquiry, and the *judge* his assistant, and the *judge* hath no judicial power. 12 *Mod.* 519. 610. *Barnes*, 135. *Holt* C. J.

Inquisition where nominal damages are given on some counts and the real damages on the remaining counts.

Who upon their oath say, that the said *A. B.* in the said writ named, hath sustained damages by the non-performance of the promises and undertakings in the first and second counts in the said writ mentioned, to the sum of 10 *l.* and by the non-performance of the promises and undertakings other than the said first and second counts, to the sum of 1 *s.* besides, &c.

Of Inquisitions.

THE sheriff in all inquisitions taken and returned by him, must therein set down the certainty of the year, day, and place of taking the inquisition.

What ought to be returned.

If the writ appoints that the inquest shall be taken at a day or place certain, the sheriff must return, that it was taken the same day and place. *Fitz. Ret. 64.*

Return ought to be certain.

In every case the sheriff ought to make his inquiry by 12 men at the least; and when the jury have appeared, he must swear them, and then give them their charge, *scilicet*, to make inquiry according to the writ. *Dalt. 260.*

To make inquiry of 12 men.

And after the charge given, if any of the jury shall depart without giving up their verdict, the sheriff may return that the jurors were charged before him, and that afterwards such of the jury or jurors departed in despite of the court without giving up their verdict; and such return is good, and an attachment will thereupon go out against the jurors. *Vide Thes. Brev. 5. Attach.*

Sheriff may return the jurors departed before verdict.

And all inquisitions made by the sheriff must be by writing indented.

And if upon an inquisition any doubt shall arise, &c. the sheriff may return, that he and the jury were in doubt, shewing wherein, and so pray the advice of the court thereon. *Vide Dalt. 260.*

The sealing of the inquisitions on writs of inquiry now are disused by the sheriff and jurors, because by the statute of 18 *Eliz. c. 14.* it is enacted, "That a verdict of 12 men, or more, shall not be reversed for or by reason of any imperfect or insufficient return of any sheriff or other officer." And by *stat. 4 & 5 Ann c. 16. s. 2.* it is enacted, "That all the statutes of jeofails shall be extended to judgments which shall at any time afterwards be entered upon confession,"

Sealing of the sheriff and jurors now disused.

"nil

" *nil dicit*, or *non sum informatus*, in any court of
 " record; and no such judgment shall be reversed,
 " nor any judgment upon any writ of inquiry of
 " damages, executed thereon, be reversed, by rea-
 " son of any imperfection, omission, or defect, which
 " would have been cured by any of the statutes
 " of jeofails, in case a verdict of 12 men had been
 " given in the said action or suit, so as there be
 " an original writ or bill, and warrant of attorney
 " duly filed."

Fieri Facias.

I MUST refer the reader for the particulars re-
 specting the execution of this writ, to p. 152.
 and for the sheriff's fees, p. 184.

Usual returns;

The returns commonly made by the sheriff to a
feri facias are, 1st *nulla bona*, which is either *gene-*
ral, that the defendant *has no goods in his bailiwick*
whereof he can cause to be made the sum directed
to be levied; or special, with this addition, *that the*
defendant is a beneficed clerk, having no lay fee within
his bailiwick: 2. *Fieri feci*, or that the sheriff *has*
caused to be made, of the defendant's goods and chattels,
the whole or a part of the money, which he has ready
to be paid to the plaintiff: 3. *That he has taken goods*
of the defendant, which remain in his hands for want
of buyers.

As to Return of Nulla Bona.

When sheriff
 may make re-
 turn of nulla
 bona.

A *fi. fa.* was delivered to the sheriff the 5th of
 December 1753, who levied; on the 8th, a commis-
 sion of bankrupt issued against the defendant, and
 on the same day a general assignment of his ef-
 fects was made, on the 28th the sheriff made a bill
 of sale, and it appeared that the act of bankruptcy
 was committed the 4th, the sheriff's return a *levy*
made; and in an action of trover against the she-
 riffs Lord Mansfield said, "The sheriffs had no au-
 " thority to sell the goods of the plaintiffs, but of
 " Johns

“ *Johns* the bankrupt, they ought to have delivered them to the plaintiffs, the assignees. Upon the foundation of the legal right, the chancellor, even in a summary way, would have ordered them to be delivered to the assignees.

“ In this action, the injury complained of is the *wrongful conversion*. The assignment was made the 8th, and the sale not till the 28th, the return of the writ not till the octave of *St. Hilary*, the sheriff acts at his peril, and is *answerable* for any mistake; *infinite inconveniences would arise, if it were not so.*

“ At the time of the sale and return, it was more notorious that these goods belonged to the plaintiffs than it could probably have been in the case of any third person; because commissioners of bankruptcy, and proceedings under them, are public in the neighbourhood, and indeed all over the kingdom. The conversion was 20 days after the assignment. These defendants have made a direct false return, they might and ought to have returned *nulla bona*, which was the truth, for the goods were no doubt the assignee's, and the bankrupt could have none after the 4th, they would have justified the truth of the fact, if they had made this return, possibly the court might interfere if the sheriff was reasonably doubtful about the property; at least they would have given him time to make his return, or he might have put it on the parties concerned in interest, to litigate their right, by filing a bill, to oblige them to interplead, in order to ascertain to whom the property belonged, or he might oblige the assignees to prove the act of bankruptcy and assignment.

“ The sheriff may take an indemnity from the plaintiff, in case there be a doubt concerning the property of the goods.” Judgment for the plaintiff. *Cooper and another assignees of Johns v. Cbitty and Blackiston sheriffs, 1 Burr. 20.*

The

Upon a *fi. fa.* the sheriff returns *nulla bona*, the bankrupt lying in prison two months, and a commission issued.

The plaintiff in *Trinity* term 1757 obtained judgment against the bankrupt in *C. P.* for 2000*l.* debt, and 6*l.* 10*s.* damages, 17th *June* a *fi. fa.* issued thereon into *Middlesex* returnable in three weeks of the *Holy Trinity*, which was the 26th of *June*. The sheriff on the 18th of same month took the goods to the value of 292*l.* 7*s.* and 5th *Nov.* returned *nulla bona*.

The bankrupt was arrested 2d *May* 1757, at the suit of the plaintiff, on the 4th of same *May*, he was charged with process out of the *C. P.* at the suit of *Solomons*, and on same day was brought by *he, corp.* to *Mr. Justice Clive's* chambers, who committed him to the *Fleet*. The bankrupt was a trader within the statutes, and remained in custody at the plaintiff's suit from the time of his first arrest, until the second of *July* following, on which day plaintiff discharged him out of custody as to his suit; but he continued as to *Solomons* until the 6th of *July*, on the 5th a commission issued, and he was declared bankrupt; on the 21st *July* his effects were assigned. *Question if the return be false.*

Lord Mansfield—“The lying two months in prison is a strong presumption that the person was insolvent at the time of the arrest. So that here is plainly an act of bankruptcy upon the 1st of *May*, whatever dispute may be made about there being one upon the second, consequently the sheriff's return is true. If the sheriff had returned that he had levied, and had actually paid the money to the plaintiff on the 26th, he would have been excused, because it was impossible for him to know he would lie two months in prison; and therefore he was under an invincible ignorance of this event. But the plaintiff could have had no advantage by this, for still he would have been liable to refund the money, although the sheriff might be excusable in paying it to him.”

Mr.

Mr. Just. Foster—"If he had made the return on the day of the writ, I cannot say, that would have been a false return, because the relation is made to be to the time of the first arrest, by the exprefs words of the statute."

Mr. Justice Wilmut—"The act is positive in making the bankruptcy to commence from the time of the first arrest."

"As to a return of this sort made on the 26th of June, which was the day the writ was returnable; I have some doubt about it, if that had been the case. I am not so clear he could then have returned *nulla bona*, because at that time there was no act of bankruptcy: and it was impossible for the sheriff to know, that there would be one in future, by the man's lying *two months in prison*, and thereby becoming a bankrupt *relatively to the time of the first arrest*."

If return had been made previous to the time expiring, it would have been wrong to have returned nulla bona.

"The return appears not actually made 'till 5th November. And indeed if the sheriff had at the very day of the return of the writ, returned, that he had levied the money; and thereupon immediately paid it over to the plaintiff, there could be no sort of doubt, but that the assignees might nevertheless have recovered it back from the plaintiff. So that the plaintiff even in that case could not have profited by such return."

If return on the day had been made of fieri feci and the plaintiff paid.

Coppindale v. Bridgen and another Sheriff of Middlesex, 2 Burr. 814.

If the goods of *A.* be seized on a *fi. fa.* against *A.* and after the seizure *A.* becomes a bankrupt, this act of bankruptcy, cannot affect the goods levied in execution. *Ld. Raym. 724.*

If a plaintiff cannot find sufficient effects of the defendant to satisfy his judgment, the court will order the sheriff to retain for the use of the plaintiff, the money which he hath levied in another action, at the suit of the defendant. *Armistead v. Philpot, Dougl. 235.*

If money be levied in another action.

Where goods were claimed under a bill of sale, the sheriff returned *nulla bona*, and the money was

Money ordered to be brought into court.

ordered to be brought into court by the sheriff, and the return to be made agreeable to the event of a trial of the validity of the bill of sale, after such validity tried in an action. 1 *Keble*. 905. *Rex v. Breen*.

The court will not stay goods taken by a *fi. fa.* in the hands of the sheriff, 'till a dispute between the plaintiff and a stranger concerning the property is decided, unless for the protection and at the request of the sheriff. 2 *Black*. 1064. *Shaw and Tunbridge*.

If a dispute happens between plaintiff and a stranger.

Nulla bona to a

fi. facias in debt.

The within-named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned, or any part thereof. The answer of, &c.

To a *fi. fa.* in case.

The within named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied, the damages within mentioned, or any part thereof. The answer of, &c.

Return of nulla bona against two defendants.

The within-named *A. B.* and *C. D.* have not, nor hath either of them, any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned, or any part thereof. The answer of, &c.

Return of new sheriff where the late sheriff returns the levy, and he is gone out of office before the return of the writ.

If the late sheriff takes the defendant upon process, or levies upon goods in his time, and the present sheriff is called on to return the writ, such return is to be made in the name of the late sheriff; then the present sheriff indorses it under thus: This writ as above indorsed was delivered by the above-named late sheriff, to me the under-named now sheriff, at the time of his going out of office. The answer of, &c.

Levy upon a *fi. fa.* in case to part, and nulla bona as to the resid. e.

By virtue of this writ to me directed, I have caused to be levied and made of the goods and chattels of the within-named *C. D.* to the value of 40*l.* which money I have ready: and the within-named *C. D.* hath not any other or more goods or chattels in my bailiwick, whereby I can cause to be levied the residue of the debt and damages within mentioned, or any part thereof, as within I am commanded.

By

By virtue of this writ to me directed, I have levied and made of the goods and chattels of the within-named *C. D.* to the value of 40*l.*; and I further certify, that I have paid to *A. B.* the landlord of the premises, the sum of 20*l.* for half-a-year's rent due to him at *Michaelmas* last, and the remaining sum of 20*l.* I have ready, as within I am commanded, and the said *C. D.* hath not any other or more goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned, or any part thereof.

If the landlord is paid, return thus.

By virtue of this writ to me directed, I have levied and made of the goods and chattels of the within-named *C. D.* to the value of 40*l.* as within I am commanded, which said goods and chattels remain in my hands unsold for want of buyers, therefore I cannot have the money before his majesty at the day and place within mentioned, as within I am commanded.

Fieri feci, and remain for want of buyers, &c.

The within-named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned or any part thereof, as within I am commanded; and I further certify, that the said *C. D.* is a beneficed clerk (having no lay-fee in my bailiwick), to wit, vicar of the parish, and parish-church of *L.* in the county of *B.* and diocese of *L.*

Nulli bona, and that defendant is a beneficed clerk.

If it is a rectory, say rector of the parish, and parish-church of *A.* in the county of *B.* and diocese of *L.*

If a rectory.

I have levied and made of the goods and chattels of *A. B.* in the writ to this schedule annexed named, to the value of 500*l.*; and I certify, that I have paid the sum of 15*l.* being the expences in levying the execution, and also to Mr. *C. D.* the landlord of the premises, the sum of 58*l.* for one year's rent, due to him at *last*, making together the sum of 73*l.* 12*s.* and the sum of 426*l.* being the residue of the said sum of 500*l.* I have ready. I also certify, that the within-named *C. D.* is a pawn-broker, and that I seized divers goods

Return to a fi. fa. levy as to part, as to the residue that certain goods, &c. seized, were on pawns in the hands of the defendant, settled by Mr. Waller.

ordered to be brought into court by the sheriff, and the return to be made agreeable to the event of a trial of the validity of the bill of sale, after such validity tried in an action. 1 *Keb.* 905. *Rex v. Breen.*

If a dispute happens between plaintiff and a stranger.

The court will not stay goods taken by a *fi. fa.* in the hands of the sheriff, 'till a dispute between the plaintiff and a stranger concerning the property is decided, unless for the protection and at the request of the sheriff. 2 *Black.* 1064. *Shaw and Tunbridge.*

Nulla bona to a

fieri facias in debt.

The within-named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned, or any part thereof. The answer of, &c.

To a *fi. fa.* in case.

The within named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied, the damages within mentioned, or any part thereof. The answer of, &c.

Return of nulla bona against two defendants.

The within-named *A. B.* and *C. D.* have not, nor hath either of them, any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned, or any part thereof. The answer of, &c.

Return of new sheriff where the late sheriff returns the levy, and he is gone out of office before the return of the writ.

If the late sheriff takes the defendant upon process, or levies upon goods in his time, and the present sheriff is called on to return the writ, such return is to be made in the name of the late sheriff; then the present sheriff indorses it under thus: This writ as above indorsed was delivered by the above-named late sheriff, to me the under-named now sheriff, at the time of his going out of office. The answer of, &c.

Levy upon a *fi. fa.* in case to part, and nulla bona as to the resid. e.

By virtue of this writ to me directed, I have caused to be levied and made of the goods and chattels of the within-named *C. D.* to the value of 40*l.* which money I have ready: and the within-named *C. D.* hath not any other or more goods or chattels in my bailiwick, whereby I can cause to be levied the residue of the debt and damages within mentioned, or any part thereof, as within I am commanded.

By

By virtue of this writ to me directed, I have levied and made of the goods and chattels of the within-named *C. D.* to the value of 40*l.*; and I further certify, that I have paid to *A. B.* the landlord of the premises, the sum of 20*l.* for half-a-year's rent due to him at *Michaelmas* last, and the remaining sum of 20*l.* I have ready, as within I am commanded, and the said *C. D.* hath not any other or more goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned, or any part thereof.

If the landlord is paid, return thus.

By virtue of this writ to me directed, I have levied and made of the goods and chattels of the within-named *C. D.* to the value of 40*l.* as within I am commanded, which said goods and chattels remain in my hands unfold for want of buyers, therefore I cannot have the money before his majesty at the day and place within mentioned, as within I am commanded.

Fieri facit, and remain for want of buyers, &c.

The within-named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned or any part thereof, as within I am commanded; and I further certify, that the said *C. D.* is a beneficed clerk (having no lay-fee in my bailiwick), to wit, vicar of the parish, and parish-church of *L.* in the county of *B.* and diocese of *L.*

Nulla bona, and that defendant is a beneficed clerk.

If it is a rectory, say rector of the parish, and parish-church of *A.* in the county of *B.* and diocese of *L.*

If a rectory.

I have levied and made of the goods and chattels of *A. B.* in the writ to this schedule annexed named, to the value of 500*l.*; and I certify, that I have paid the sum of 15*l.* being the expences in levying the execution, and also to Mr. *C. D.* the landlord of the premises, the sum of 58*l.* for one year's rent, due to him at *last*, making together the sum of 73*l.* 12*s.* and the sum of 426*l.* being the residue of the said sum of 500*l.* I have ready. I also certify, that the within-named *C. D.* is a pawn-broker, and that I seized divers goods

Return to a fi. fa. levy as to part, as to the residue that certain goods, &c. seized, were on pawns in the hands of the defendant, seized by Mr. Wall-ut.

and chattels which were deposited in his hands, as pawns of several persons to the value of 540*l.* which remain in my hands; and I further certify, that the within defendant hath not any other or more goods or chattels in my bailiwick, whereof I can cause to be levied, the residue of the debt and damages within mentioned, or any part thereof, as within I am commanded.

Mandavi ballivo.

I have sent to the bailiff of the liberty of *S.* in my county to levy the within debt and damages, which said bailiff hath the full return of all writs and process within the same liberty, and the execution thereof: so that no execution of this writ can be made by me, within the said liberty; which said bailiff hath not yet given me any answer thereto. The answer of, &c.

Or if he hath answered, which said bailiff hath answered me thus (here set forth his return and name).

Return to a fi.
fa. against executor of nulla
bona testatoris.

The within-named *A. B.* hath not any goods or chattels, which were of the within-named *C. D.* at the time of his death in his hands to be administered, whereby I can cause to be levied, the debt and damages within mentioned, or any part thereof.

Fieri feci.

I have levied and made of the goods and chattels of the within-named *C. D.* deceased, in the hands of *A. B.* executor, within mentioned, to the value of 50*l.* which money I have ready. The answer of, &c.

To a fi. fa.
against an executor where the
levy is to be made
of the goods of
the testator, if he
hath any in his
hands, if not
then costs of the
goods of executor.

I have levied and made of the goods and chattels which were of the within-named *C. D.* at the time of his death, to the value of 50*l.* which money I have ready. The within-named *A. B.* executor, &c. hath not any goods or chattels in my bailiwick, whereof I can cause to be levied, the sum of 6*l.* the costs and charges within mentioned, or any part thereof. The answer of, &c.

Nulla bona to fi.
fa. against an executor and a de-
vassavit.

The within-named *B. W.* hath not any goods or chattels, which were of the within-named *M. H.* at the time of his death in my bailiwick, in his hands

hands to be administered, whereby I can cause to be levied the debt and damages within mentioned, or any part thereof. And I further certify, that divers goods and chattels, which were of the within-named *M. H.* at the time of his death, came to the hands of the said *B. W.* after the death of the said *M. H.* to be administered, to the value of the debt and damages within mentioned; which said goods and chattels, the said *B. W.* executor, as aforesaid, hath elained and waisted, and converted the same to his own use. *Thes. Brev. 117. (a)*

Habeas Corpus.

THERE are several writs of *habeas corpus*, Habeas corpus. to which the subject is entitled by common right, when he is deprived of his liberty. But the great and efficacious writ, in all manner of illegal confinement, is that of *habeas corpus ad subjiciendum*, directed to the person detaining another, and commanding him to produce the body of the prisoner, *with the day and cause of his caption and detention, ad faciendum, subjiciendum, & recipiendum*, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf. *State Trials*, vol. 8. 142.

The writ of *habeas corpus ad faciendum & recipiendum*, which is commonly called a *habeas corpus cum causa*, Ha. corp. cum causa. "because it commands the sheriff, or person in whose custody he is, to bring him before the chief justice therein named, or in his absence, any other justice of the same court, together with the day and cause of his caption and detainer, to do and receive whatsoever shall be considered of him in that behalf;" who, upon reading the causes returned, will of course commit him to the king's bench prison; but if he be already in custody, by virtue of a writ issued out of this court, he may have this writ in the first instance to go to that prison.

(a) It is now usual to bring an action suggesting a *devastavit*; which is the better way.

Formerly this writ could not be returnable immediately unless, &c. but now may.

This writ, in the fifth year of the reign of *Charles II.* could not be returnable immediately, or in the vacation, unless the party was in prison in *London* or *Middlesex*, or in order to deliver him over in discharge of his bail; but since the statute of *William III.* which gave liberty to a plaintiff (instead of bringing his prisoner to this court at the great expence of the writ of *habeas corpus ad respondendum*) to charge him with a declaration in prison; it has been determined, that in all civil suits, this writ may be had returnable immediately, before a judge at his chambers, and may now be sued out, without any previous motion made. *Vide 3 Burr. 1876.* And that if the sheriff, &c. do not obey it in convenient time, he will not only be subject to the penalties in the *31 Car. 2* but to an attachment for his contempt, that sort of punishment being the spirit of the act of parliament. *Vide 2 Burr. 854.*

Habeas corpus, ad testificandum.

The *habeas corpus ad testificandum* is issued, where a witness is confined in prison, directed to the marshal, sheriff, &c. in order to bring him before the court where the cause is to be tried, to give evidence on the part of the person who sues it out; the sheriff returns this writ with the causes of detainer, and the keeper brings the body into court.

Ha. corp. ad satisfaciendum.

The *habeas corpus ad satisfaciendum* is directed to the same person, to bring the body into court, with the causes of his detainer, on a day certain named, therein to satisfy, or make satisfaction, to the plaintiff, the debt and damages stated therein, which being obeyed, the court commit him to the custody of the warden or marshal, as the writ directs.

Writs of *habeas corpus* within three days after service, to be returned, and the body brought if within 20 miles.

By *stat. 31 Car. 2. c. 2. s. 2.* it is enacted, that whosoever any person shall bring any *habeas corpus*, directed unto any sheriff or gaoler, &c. or other person, for any person in his custody, and the writ shall be served on the said officer, or left at the gaol or prison with any of the under officers, under keepers, or deputies, he or they shall within three days after such service thereof, (unless the commitment

commitment were for treason or felony, plainly and specially expressed in the warrant of commitment,) upon payment or tender of the charges of bringing the said prisoner to be ascertained by the judge or court that awarded the same, and indorsed on the same writ, not exceeding 12d. per mile, and on security given by his own bond to pay the charges of carrying back the prisoner, if he should be remanded, and that he will not make any escape by the way, make return of such writ, and bring the body of the party so detained, &c. before the lord chancellor, &c. or such other persons before whom the said writ is made returnable, and shall certify the true causes of his detainer, unless the commitment be in a place beyond twenty miles distance, &c. and if beyond the distance of twenty, and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days.

That all such writs shall be marked in this manner, *per statutum tricesimo primo Caroli secundi regis*: and signed by the person that awards the same, and if any person shall stand committed for any crime, (unless for treason or felony, plainly expressed in the warrant of commitment,) in the vacation time, it shall be lawful for such person so committed, (other than persons convicted, or in execution by legal process,) or any one on his behalf, to complain to the lord chancellor, &c. and the said lord chancellor, &c. justice or baron on view of the copy of the warrant of commitment or on oath that it was denied, are required, on request in writing, by such person, or any on his behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to grant an *habeas corpus* under the seal of the court, whereof he shall be one of the judges, to be directed to the officer in whose custody the party shall be, returnable *immediate*, before the said lord chancellor, &c. justice or baron; and on service thereof as aforesaid,

Upon tender of the charges to be ascertained by the judge, not exceeding 12 d. per mile.

Beyond 20 miles and not 100, 20 days to return, if beyond 100, then within 20 days.

Such writ how to be marked.

And if any person, &c. shall be committed.

In vacation time to complain, &c. &c.

Who is to grant an *habeas*,

returnable immediately.

And the officer shall, within the said times.

Certify the true causes of the commitment.

the officer, &c. in whose custody the party is, shall within the times limited, bring him before the said lord chancellor, &c. before whom the said writ is returnable, and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer; and thereupon within two days after the party shall be brought before them, the said lord chancellor, &c. before whom the prisoner shall be brought, shall discharge the said prisoner from his imprisonment, taking his recognizance, with one or more sureties, in any sum, according to their discretion, having regard to the quality of the prisoner, and nature of the offence, for his appearance in the *king's-bench* the term following, or in such other court where the offence is properly cognizable, as the case shall require; and shall certify the said writ with the return thereof, and the recognizance into such court, unless it be made appear to the said lord chancellor, &c. that the party so committed is detained upon a legal process, order, or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences, for the which by law the prisoner is *not bailable*.

Sect. 3.

After affizes proclaimed, no prisoner to be removed upon ha. corp. but shall be brought before the judge of assize.

“ That after the affizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any *habeas corpus* granted in pursuance of this act, but, upon such *habeas corpus*, he shall be brought before the judge of assize in open court, who thereupon shall do what to justice shall appertain.” *Sect. 18.*

Officers how to be proceeded against, for not obeying such writs.

“ That if any officer, &c. shall neglect or refuse to make return, or bring the body of the prisoner according to the command of the said writ, within the respective times, or upon demand made by the prisoner or person in his behalf

“ half

“ half, shall refuse to deliver, or, within the
 “ space of six hours after demand, shall not de-
 “ liver to the person so demanding a true copy
 “ of the warrant or warrants of commitment and
 “ detainer of such prisoner, which he and they
 “ are hereby required to deliver accordingly, all
 “ and every the head gaolers and keepers of such
 “ prisons, and such other person in whose custo-
 “ dy the prisoner shall be detained, shall for the
 “ first offence forfeit to the prisoner or party
 “ grieved, the sum of 100*l.* and for the second
 “ offence the sum of 200*l.* and shall, and is here-
 “ by made incapable to hold or execute his said
 “ office.” *Stat. 5.*

As the gaoler, &c. is obliged to bring up the prisoner at the day prefixed by the writ, it is no excuse for not obeying of a writ of *habeas corpus ad satisfaciendum*, that the prisoner did not tender his fees due to the gaoler; nor yet is the want of such tender an excuse for not obeying a writ of *habeas corpus ad faciendum et recipiendum*; but if the gaoler bring up the prisoner by virtue of such *habeas corpus*, the court will not turn him over till the gaoler be paid all his fees. 2 *Jon.* 178. *March*, 89. *Keb.* 272, 280. 2 *Show.* 172. *pl.* 165.

No excuse for
 sheriff or gaoler,
 that he is not
 paid.

As upon the return of the writ the court is to judge, whether the cause of the commitment and detainer be according to law or against it; so the officer or party, in whose custody the prisoner is, must, according to the command of the writ, certify on the return thereof *the day, and also the causes depending against him, and in extra-judicial commitments, the warrant of commitment ought to be returned, as also every writ of execution in hæc verba, and with a paratum habeo, that the judge may either discharge, bail, or remand the prisoner,* 2 *Neif. Air.* 915. 2 *Cro.* 543. 5 *Mod.* 156. 2 *Lil. Abr.* 2.

The sheriff is to
 make a certain
 return.

It is said in general, that upon the return of the *habeas corpus* the cause of the imprisonment ought to appear as specifically and certainly to the judges before

What ought to
 appear.

If commitment
be against law,
the court ought
to discharge de-
fendant.

before whom it is returned, as it did to the court or person authorised to commit. *Vaugh.* 137.

For if the commitment be against law, as being made by one who had *no jurisdiction* of the cause, or for a matter for which by law no man ought to be punished, the court are to discharge him, and therefore the *certainty of the commitment ought to appear*; and the commitment is liable to the same objection where the cause is so loosely set forth, that the court cannot adjudge whether it were a reasonable ground of imprisonment or not. *Hal. P. C.* 584. *Skin.* 676. *pl.* 2. 12 Co. 130.

Cannot return
resistance.

The sheriff cannot return that he was resisted, and therefore disabled to make execution of the writ, for by 13 *Ed.* 1. c. 39. he may take *posse comitatus.* 2 *Inst.* 454.

Excom. capiend.
ought to be set
forth at large.

If a person in custody on an *excommunicato capiendo*, brings a *habeas corpus*, the writ of *excommunicato capiendo* itself must be returned, as well as the sheriff's warrant for taking him, because the warrant may be wrong, when the writ is right; and though the warrant be wrong, yet if the writ is right, the party is rightfully in custody of the sheriff. *Salk.* 350. *pl.* 7.

Return to a ha.
corp. to bring
up the body with
the cause.

Oxfordshire, } I G. B. Esq; sheriff of the said coun-
to wit. } ty, do humbly certify, and return
to the right honourable *Lloyd lord Kenyon*, his
majesty's chief justice in the writ to this schedule
annexed, that before the said writ came to me (that
is to say) on the day of in the year
within written, *C. D.* in the said writ named, was
taken, and in his majesty's gaol, for the said
county, under my custody is detained, by virtue of
his majesty's writ of *latitat* against him, by the name
of *C. D.* to answer *A. B.* in a plea of trespass,
and also to a bill of the said *A. B.* against the
said *C. D.* for 100 *l.* upon promises, according,
&c. to be exhibited returnable before the king
at *Westminster*, on *Wednesday* next after the
morrow of *All Souls*. Witness *Lloyd lord Kenyon*,
at

at *Westminster*, the 12th day of *June*, in the 39th year of his present majesty's reign. *Way.*

Oath for 50*l.* and upwards.

A. K. attorney, 5th *Sept.* 1799.

The said *C. D.* is also detained under my custody by virtue of a writ of *capias ad satisfaciendum*, the tenor of which said writ follows in these words: (to wit) *George* the third, &c. (here set forth the writ *verbatim*, attorney's name, and the indorsement; then say,) And these are the causes of the taking and detaining the said *C. D.* which together with his body I have ready, as by the said writ I am commanded.

Detained also on a ca. sa.

Indorse on the writ thus, "The execution of this writ appears in the schedule hereto annexed."

Return to the writ to be indorsed thereon.

The answer of *G. B.* Esq; sheriff.

Oxfordshire, } I *J. P.* Esq; sheriff of the county
to wit. } aforesaid, do humbly certify, and return to the right honourable *Lloyd* lord *Kenyon*, the chief justice in the writ to this schedule annexed-named, that before the said writ came to me (that is to say) on the day of in the 39th year of the reign of his present majesty, the said *C. D.* in the said writ named, was taken by *G. H.* esq; then sheriff of the said county, and in his majesty's gaol for the said county was detained under his custody by virtue of his majesty's writ of *latitat*, issued against him, by the name of *C. D.* to answer *A. B.* in a plea of trespass, and also to a bill of the said *A. B.* to be exhibited against the said *C. D.* for 100*l.* upon promises, according, &c. returnable before the king at *Westminster*, on *Wednesday* next, after fifteen days from the day of *Easter*. Witness *Lloyd* lord *Kenyon*, at *Westminster*, the 12th day of *February*, in the 39th year of his present majesty's reign.

Another where defendant was in custody of the late sheriff, and this writ returned by the present.

Oath for 50*l.*

S. K. attorney, 1st *Feb.* 1799.

And that by indentures duly executed, bearing date the day of in the year aforc-

aforesaid, made between the said *G. H.* esq; then late sheriff of the said county, of the one part, and me the said *J. P.* then and now sheriff of the said county, of the other part, the said *C. D.* was delivered to me the said present sheriff, by the aforesaid late sheriff at the time of his going out of his office, charged with the cause aforesaid; he is also detained under my custody, by virtue of a writ of *capias*, returnable before the king's justices at *Westminster*, on the morrow of *All Souls*, to answer *J. B.* in a plea of trespass, and also that the said *C. D.* may answer the said *J. B.* according to the custom of the court of *common-bench*, in a certain plea of trespass on the case upon promises, to the damage of the said *J. B.* of 50*l.* Witness, &c. Oath for 10*l.* and upwards. *B. L.* attorney. And these are the causes of taking and detaining the said *C. D.* whose body I have ready, as by the said writ I am commanded.

Warrant to the
gaoler, to con-
duct the body
before the chief
justice.

Oxfordshire, } *J. B.* Esq; sheriff of the said county,
to wit. } to *C. S.* my bailiff, and also keeper
of his majesty's gaol or prison in and for the said
county, by virtue of his majesty's writ to me di-
rected, I command you, that you have the body
of *J. K.* before *Lloyd* lord *Kenyon*, chief justice,
assigned to hold pleas, &c. at his chambers in
Serjeants'-Inn, Chancery-lane, London, immediately
after the receipt of this your warrant, to do and
receive what the king's chief justice shall then and
there consider of him in this behalf; hereof fail
not, as you will answer at your peril, Given
under my hand and seal of office, this day
of 1799. By the same sheriff.

Return of ha-
corp. from a
steward and port-
reeve of a bo-
rough, where
bail was given
after an interlo-
cutory judgment
for the plaintiff
levied in that
court.

Borough of Swansea, in the county of Glamorgan
(to wit). We, *Gabriel Powell* Esq; steward of the
court of pleas of our sovereign lord the king, held
in and for the said borough, and *Rowland Pritchard*,
Esq; portreeve of the said borough, and court
aforesaid, do humbly certify, unto *Lloyd* lord
Kenyon, chief justice assigned to hold pleas in his
majesty's court before the king himself, that be-

fore the coming of this writ to us directed, and to this schedule annexed, *J. B.* in the said writ named, was taken and detained under our custody, by virtue of a writ of *copias ad respondendum*, issued out of the said court of pleas, held in and for the said borough, against him, by the name of *J. B.* to answer *C. D.* of a plea wherefore, that he, with force and arms, the close of the said *C.* at *Swansea*, did break, and other injuries to him did, to his great damage, and against his majesty's peace. And also to answer the said *C.* according to the custom of the same court, of a plea of debt, to the damage of the said *C.* of 120 *l.* Witness *Gabriel Powell* esq; steward, and *Rowland Pritchard*, esq; portreeve, the day of *November*, in the year of his present majesty's reign.

Take bail for 60 *l.* per affidavit,

filed. *Gab. Jeffereys*, deputy *Gab. Powell*
recorder. *Row. Pritchard*.

To which said writ the said *J. B.* hath put in special bail, and the said *C. D.* hath declared against him, in a plea of trespass on the case, to his damage of 100 *l.* And at a court holden in and for the said borough, on *Monday* the day of *January* 17 , in the *Guildhall* of the said borough, the said *C. D.* obtained an interlocutory judgment against the said *J. B.* for want of a plea, and so the said plea remains in the said court undetermined.

And this is the only cause of taking and detaining the said *J. B.* in the said writ to this schedule annexed named, which, together with his body, we have ready, as by the said writ we are required. The answer of, &c.

Gab. Powell, steward.

Row. Pritchard, portreeve.

The execution of this writ appears in the schedule hereunto annexed. The answer of, &c. Return on writ.

Gab. Powell, steward.

Row. Pritchard, portreeve.

The

Return to a hab.
corp. ad satisf.
in the late riots
by the warden of
the Fleet.

The Fleet, } I the within-named warden of the
to wti. } prison of our lord the king of the
Fleet, do most humbly certify and return, that be-
fore the coming of the within writ to me directed,
to wit, on the 7th day of June in the year of our
Lord 17, the said prison having been destroyed
by fire, which I could not prevent, and the prisoners
lately confined in the said prison being now at
large (amongst which the said S. H. within-named
is one), therefore the body of the within-named
S. H. before the barons of the king's court of exche-
quer within-mentioned, at the day within-written,
I cannot have, as I am within commanded.

Return to writ.

The execution of this writ appears in the sche-
dule annexed. The answer of, &c.

Party dead, a
good return.

Upon a *habeas corpus cum causa*, it is a good re-
turn, that the party is dead. *Bro. Ret.* 125.
Dalt. 219. 251.

Sheriff to return
the truth.

If a man be condemned in any court, and his
body taken in execution, and then he procures
any writ to the sheriff to remove his body, &c. the
sheriff upon such writ ought not only to return
the truth, or cause of the condemnation, viz. that his
prisoner is condemned by judgment, or in execu-
tion, that so at the last the prisoner may be re-
manded; for he shall not be let to mainprize, but
be sent back to prison, there to remain until he
hath satisfied the plaintiff. *Fitz.* 251. 2 H. 5. c. 2.
But also the sheriff ought to bring in the body at
the day, and according to the wr.t. *Dalt.* 253.

May return cepi
and languidus.

To this writ the sheriff may return *cepi and lan-
guidus* so that he could not have the body without
danger and peril of his life. *Lib. Intr.* 190. *Kitch.*
258. *Dalt.* 250.

Imprisonment
for felony, &c.

Also may return him in custody for felony, mur-
der, treason, or the like. *Dalt.* 252. Outlawed, ex-
communicated, or committed by a mittimus from a justice;
in these cases set forth the warrant *in hæc verba*,
Officin. Brev. 235. or by an order of sessions.

Commitment by
commissioners
of bankrupts.

If a return be of a commitment by commissioners
of bankrupt, say, on the day of

1799;
J. M.

J. M. in the said writ named, is detained in my custody, [in the prison of *N.* by virtue of an order under the hands and seals of the major part of the commissioners named in a commission of bankrupt awarded and issued against the said *T. M.* the tenor of which said order is in the words and figures following, that is to say (*state the whole order verbatim, and their names*).

And this is the cause of the taking and detaining the said *J. M.* whose body I have ready according to the command of the said writ hereunto annexed.

By *stat. 21 Jac. 1. c. 23.* Where the judge of an inferior court is an utter barrister of three years standing at the bar, no cause shall be removed from thence by *habeas corpus* or other writ, except it be delivered before issue, or demurrer joined in the said cause, so as the said issue or demurrer be not joined within six weeks next after the arrest or appearance of the defendant to such action.

No cause shall be removed by *ha. corp.* except it be delivered before issue, *&c.* joined, so as it be not joined six weeks next after arrest, *&c.*

I *John Eyles* Esq; warden of the prison of our lord the king, of the *Fleet*; To the justices of the lord the king within written, most humbly certify and return, that before the coming of this writ to me directed, the within-named *A. B.* by force and arms, broke the said prison, and out of my custody, without any leave, and against my will, escaped and fled to places to me unknown, and is not yet brought back or retaken; and for that cause, the body of the said *A. B.* before the justices of the lord the king within written, at the day and place within contained, I cannot have, as is to me within commanded.

Return to a *ha. corp.* out of the crown office, that the prisoner broke prison and escaped.

The answer of *J. Eyles*, Esq; warden.

A *habeas corpus ad testificandum*, is returned with all the causes against the defendant, in the same manner as an *habeas corpus cum causa*, and the gaoler's man attends with him.

Ha. corp. ad testificandum the sheriff to return,

So is the *habeas corpus ad satisfaciendum*.

The sheriff on this writ returns the usual pledges to prosecute *John Doe* and *Richard Roe*, and that the

Return of a *formacion*.

the summoners are J. T. and R. J. *Dalt.* 247. *Vide Dy.* 252.

But he ought not to return *nihil, non est inventus*, for he is to summon him on the land demanded, whether he be tenant or not. *Dalt.* 248.

Habere Facias Possessionem.

FOR particulars concerning this writ, and of the writ of *habere facias seisinam*, vide p. 192.

What sheriff
may return.

To this writ, the sheriff may return, that he has given full and quiet possession of the premises in the writ mentioned to the plaintiff, *John Doe*.

Always ready to
deliver.

That he was always ready to deliver possession, and appointed divers times for the plaintiff to come and receive the same from him; at which time, he was there ready to deliver him the possession, but that no one came on the plaintiff's behalf, to receive it. *Dalt.* 539. *Roll.* 459. *Floyd v. Bethell*, title *Return*.

No such land not
good.

But it is no good return, that there is no such land. 5 *H.* 7. 27.

Offered to give
possession.

The sheriff may return, that he offered to the demandant possession, but he refused to take it. *Dyer*, 278.

Sheriff was ten-
nant.

That the sheriff was tenant to the land, and therefore he could not serve the writ. *Br. Ret.* 46.

Tenant not
knowing the
land, may pray
the view for she-
riff, not bound
to know, or seek
the land.

But where the tenant doth not well know the land demanded, he may pray the view, so that he may be shewed which is the land demanded. And the sheriff is not bound to know, or to seek the land demanded; and therefore, except the demandant shews it to him, he may make his return accordingly.

When sheriff
makes the view,
he ought to warn
the tenants.

When the sheriff makes the view, he ought to warn the tenants and veyors; for otherwise the tenants shall not know when the sheriff makes the view. And the sheriff and veyors must go to the tenements demanded, &c. And the sheriff must

must have with him *fix* at the least of the jury to take the view. *Co. Litt.* 158. *Dalt.* 256. *lib. Intr.* 686.

Where part of a manor, or the like, is in demand, the view shall be of the whole. *11 H. 4. Bro. View.* 39. So where a moiety or third part of house or land is only in demand, yet the whole shall be put in view. *Ibid.* 46. 71.

Where part of a manor is in demand.

The sheriff may return, that he was ready to make the view, and that neither the tenant, nor any for him came to the view. *Fitz. View.* 126.

May return ready to make view.

By virtue of this writ to me directed, I did on the day of in the year within-written, give full and peaceable possession unto the within-named *John Doe*, of the messuages, lands and premises, with the appurtenances within-mentioned, as within I am commanded. The answer of, &c.

Return to hab. fac. poss. of full possession being given.

Add this, and the within-named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the damages and costs within-mentioned, or any part thereof.

If a *fi. fa.* is annexed, and no goods.

I have levied and made of the goods and chattels of the within-named *C. D.* to the value of 20*l.*, being the damages and costs within-mentioned, which money I have ready.

If a levy of goods.

By virtue of this writ to me directed, I have been always ready and willing to deliver the possession of the premises within mentioned, to the within-named *John Doe*, with the appurtenances, as I am commanded. But that no one came to me on the part of the said *John Doe*, to shew the same premises to me, or any part thereof, or to receive the possession thereof, or any part thereof, from me. The answer of, &c.

Return no one came to shew or receive possession of the premises.

For a return to a *habere facias seisinam*, vide *Dower*.

The return to this writ, is either *cepi corpus*, or *Latina non est inventus*. *Lib. Intr.* 109. c. 166. d. *mandavi ballivum, languidus*, and that defendant is a mem-

M M

ber

ber of parliament, or bankrupt, within the *forty two days* allowed for his surrender or *rescous*.

Levari Facias.

Leva. fac.

FOR the particular execution of this writ, see p. 173.

What is a good return.

On this writ, the sheriff returned, that he levied 10*l.* of the sum, &c. the which he hath delivered to the party: this seems to be a good return: and upon this return, the party may sue a *scut alias levari facias*, directed to the sheriff, to levy the residue. *Dalt.* 260.

To be levied of the profits of the land.

This writ is only to be levied upon the profits of the land, and upon the goods of him that hath forfeited a recognizance, &c. *Reg. Orig.* 298. 300. But the sheriff cannot seize the land, and deliver that to the party. *Plow.* 441.

Nulla bona.

The within-named *A. B.* hath not any goods, chattels or rents in my bailiwick, where or by which I can cause to be levied the debt within mentioned, or any part thereof, as within I am commanded.

Capi.

I have taken into the hands of the lord the king, a certain inn, with three shops, (in such a place,) of the within-named *J. S.* which are of the annual value of 10*l.* besides reprises; and that the aforesaid inn, with the shops aforesaid, remain in my custody, until I have another command. *Dalt.* 260.

Lunacy.

THE commission being obtained, the sheriff appoints a place for the execution thereof, which ought to be near the place of the supposed lunatic's abode; a precept is then sent to the sheriff, to summon a jury of *twenty-four men*, who immediately issues his summons to his bailiff for that purpose:

purpose: the summons contains in substance the precept.

The sheriff attends this commission, as well as his officer who summoned the jury, and the following oath is administered by the sheriff to the jury.

You shall well and truly inquire of all such matters and things as shall be given you in charge, by virtue of his majesty's commission now to you read, and a true verdict give, according to the evidence that shall be produced.

The oath to be administered to the foreman.

So help you God.

The same oath that your foreman hath taken on his part, you and each of you, shall well and truly observe and keep on your parts.

Form of the oath to be administered to the other jurors.

So help you God.

The sheriff returns the precept of the commissioners, adding a panel of the jurors thereto.

The execution of this precept appears in a certain panel hereto annexed. The answer of, &c. Return,

The commissioners return the commission.

This writ is used for the delivery of goods, &c. Liberate.
on an *extent*; and by the *extent*, the consuee of a recognizance hath not any absolute interest in the goods, until the *liberate*. 2 Lill. 169. This writ is to be sued on a statute staple, on a recognizance, before there can be a delivery in execution. 3 Salk. 159.

By virtue of this writ to me directed, on the day of _____ in the year within written, Return of liberate, after an extent on bond.
I have delivered to the within-named L. S. the manor, lands, and tenements within specified, with the appurtenances, to hold to him and his assigns, as his free tenement, until the debt within mentioned, with the damages and costs, are fully paid and satisfied, as I am within commanded; and the within-named J. S. is not found in my bailiwick. The answer of, &c. Lib. Intr. 598. Dalt. 261. 233.

M M 2

Upon

Upon a *liberate*, if the sheriff hath duly executed the writ, and paid the money to the plaintiff, he need not return the writ. *Dalt.* 261. 179.

Cepi corpus to a
ne exeat regnum.

I have caused the within-named *N. B.* personally to come before me, and he found bail in the penalty of 600 *l.* according to the command of the within writ. The answer of, &c.

Pone.

Return to a writ of *pone*, *vide* p. 241. and return of summoned.

Proclamation.

Return to a writ of proclamation on an *exigent*, see *Exigent*.

To a proclamation in
chancery.
Dalt. 298.

I have caused proclamation to be made, as within I am commanded; and I further certify, that the within-named *C. D.* is not found in my bailiwick. The answer of, &c.

Cepi upon a proclamation out of
chancery, and detained on other writs, so that he could not have the body without a ha. corp. cum cause.

I have caused proclamation to be made, as within I am commanded, and I have by virtue of this writ taken the body of the within-named *C. D.* and him in the prison of the lord the king of *N.* under my custody, have caused to be safely kept; but because the aforesaid *C. D.* is also detained in my custody, by virtue of divers other causes, at the suit of divers other persons, therefore I cannot have his body at the day and place within contained, as within I am commanded, without the writ of the lord the king, to have the body of the said *C. D.* together with the day, and cause of his being taken and detained, to me in this behalf directed.

Quare impedit.

The defendant must be summoned by the sheriff, and it may be made in the church, or to the person.

Tarde.

The sheriff may returne *tardè*. *Vide New Ra. Brev.* 409.

Nihil.

Also he may return *nihil* upon the summons, and upon the *attachment* and *distingas*. *Ibid.*

In a quid juris
clamat.

Upon a writ of summons, in a *quid juris clamat*, the sheriff is to return the party summoned, in this or the like manner:

Summoners

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p. 2.
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Summoners are { *E. F.*
J. S.
J. D.

The answer of *J. K. esq;* sheriff.

Return to a writ of *recordari facias loquelam*, *vide* Record, fac. lo-
 p. 240. que.

Rescue, returned by several, p. 246. and by the defendant himself, p. 249. Rescue.

By virtue of this writ to me directed, immediately after the receipt of this writ, I restored and put into full and peaceable possession, the messuages and land with the appurtenances within mentioned, unto the within-named *A. B.* as within I am commanded. Return to a writ of restitution.
 Greenw. 239. officin. brev. 224.

Pledges to prosecute { *John Doe*,
 and
Richard Roe.

Return to a writ of right patent.

The summoners of the within-named *G. C.* are *I. A.*, *D. S.*; and at the most usual door of the parish church of, &c. within mentioned, on Sunday the day of in the year within written, immediately after divine service and sermon ended, I did cause publick proclamation to be made according to the form of the statute in such case made and provided. The answer of, &c.

Upon this writ issues a grand cape for non appearance; for the return of which see title *Dower*.

By virtue of this writ to me directed, I have caused *J. E.*, *I. H.*, *P. D.*, and *G. M.* four lawful knights of my county, to be summoned by *I. A.* and *G. W.* my bailiffs, to be before his majesty's justices at the day and place mentioned, to do as by this writ they are required, and as I am within commanded: the said summoners are, and each of them is mainprised, by *John Doe* and *Richard Roe*. The answer (a) of, &c. The return of the alias writ of summons of four knights.

(a) Upon the grand cape, the sheriff must summon the tenant, to answer to his default, and further to answer to the demand. Dalt. 249. and the names of the summoners. He may return that he hath nothing whereby he can be summoned. *Ibid.* And that there is no such town, *Ibid.*

Seire facias.

The sheriff upon this writ is only to warn the party to appear (before the justices, &c.) according to the writ, and then to return the same: But such warning is to be by *summons*, which is directed to the bailiff, to give knowledge to the defendant, that he appear at such a man's suit, in such a court, at a certain day, there to do that which the writ requires.

What sheriff may return.

He may return *nihil, tardè*, or that the party is dead: *Lib. Intr.* 458. *Br.* 125, or summoned. But he ought to return the *real names* of the *summoners*.

Nihil to sci. fa.

The within-named *A. B.* hath not any thing in my bailiwick, where or by which I can give him notice, as within I am commanded, or is the said *A. B.* found in the same.

Nihil to two defendants.

The within-named *A. B.* and *C. D.* have not, or hath either of them, any thing in my bailiwick, where or by which I can give them, or either of them notice, as within I am commanded, nor are they, or is either of them found in the same. The answer of, &c.

Summonire fecit.

By virtue of this writ to me directed, by *W. D.* and *J. K.* good and lawful men of my bailiwick, I have given notice to the within-named *C. D.* to be and appear before the lord the king on the day, and at the place within mentioned, to shew, &c. as within I am commanded. The answer of, &c.

Summons to one and nihil to the other.

By virtue, &c. I have given notice to the within-named *A. B.* to be, and appear before the lord the king, on the day and at the place to shew, &c. as within I am commanded. The within-named *C. D.* hath not any thing in my bailiwick, where or by which I can give him notice, as within I am commanded, or is he found in the same. The answer of, &c.

That defendant died.

Before this writ came to me, the within-named *A. B.* died; therefore I cannot make known to him, as within I am commanded.

Return to seire fac. against the heirs or tenants.

There are not any heirs or tenants of the lands or tenements whereof the within-named *C. D.*

was seised at the time of the rendition of the judgment within mentioned in my bailiwick, or ever after, whereby I can give notice to them, or either of them, as within I am commanded.

By virtue of this writ to me directed, I have given notice by *J. D.* and *J. H.* good and lawful men of my bailiwick, to *J. K.* tenant of 15 messuages, and 100 acres of land, with the appurtenances, situate, lying and being in the parish of *A.* in my bailiwick, which were the lands and tenements of *J. K.* at the time of the rendition of the judgment within mentioned, to be and appear at the time and place within mentioned, to shew in manner as within mentioned, and as within I am commanded.

Return of notice to the tenant.

If the writ be directed, to give notice to the heirs and tenants of the lands, then add, if they are not in the bailiwick; There are not any heirs or tenants of the lands or tenements, whereof the said *A. K.* was seised at the time of the rendition of the judgment within mentioned, in my bailiwick, or ever after, whereof I can give notice to them or either of them, as within I am commanded.

If no heirs or tenants, then return thus.

The within-named *C. D.* executor, within mentioned, hath not any thing in my bailiwick, where or by which, &c.

Nulla bona against an executor, &c.

The within-named *A. B.* administrator, within mentioned hath not any thing in my bailiwick, where or by which, &c.

Against administrator.

To this writ the sheriff may return a *mandavi ballivo.* *Rass. Entr. 237.*

Mandavi ballivo.

The within-named *A. B.* and *C. D.* bail of the within-named *G. H.* have not, nor hath either of them any, thing in my bailiwick, &c.

To a sci. fa. against bail nihil.

For return to this writ, vide *Dower.*

By virtue of this writ to me directed on the 6th day of *December*, in the year within written, I caused full seisin of the tenements within specified,

Hab. fac. seisin.

To a writ of seisin.

M M 4

with

with the appurtenances, to be delivered to the within-named *E.* as I am within commanded.

Return to a writ
of summons.

Summoners are, { *John Dee,*
and
Richard Lee.

To a precept to summon the assize, *vide Circuit.*

To a precept to summon the sessions, *vide Sessions.*

Superfedeas.

I have altogether ceased from the execution of this writ against the within-named *C. D.*, having received his majesty's writ of *superfedeas* for that purpose. The answer of, &c.

Second deliver-
ance.

For the return to this writ, *vide p. 241.*

Return to a
writ of venditio-
ni exponas.

I have sold the goods and chattels within mentioned, for the within sum of 50 *l.*, being the dearest price I could get for the same, which monies I have ready as within I am commanded. The answer of, &c.

If in the exche-
quer.

I have sold the goods and chattels within mentioned for the sum of 500 *l.*, being the dearest price I could get for the same; which monies I have before the barons of the king's exchequer at *Westminster*, at the day within mentioned, ready to be paid to his majesty's use. The answer of, &c. This writ issues to the sheriff on his former return of having goods to the value of, &c. and that they remain in his hands for want of buyers.

Return sum-
moned of venire
facias out of ex-
chequer.

Summoners are, { *James Armstrong,*
and
Richard Ross.

The answer of *J. B.*
and
R. S. esqrs; } Sheriffs.

Nihil to the
same.

The within-named *C. D.* hath not any thing in my bailiwick, where or by which I can give notice to him, as within I am commanded, or is he found in the same. The answer of, &c.

Venire facias
juratorum.

The execution of this writ appears in the panel hereto annexed.

Here

Here add a panel of the jurors thereto, if in *C. P.* or *exchequer*, if in *K. B.* no need, as you add one to the *distringas*.

The same return does to a *distringas*, or *habeas corpora juratorum*.

No issues are returned upon the *venire*, only pledges.

Each of the jurors are separately attached by pledges. *John Doe and Richard Roe.*

The within-named *A. B.* hath not any cattle, goods or chattels in my bailiwick, which I can take in withernam as within I am commanded, nor hath he any other goods or chattels in my bailiwick by which he can be attached, or is he found in the same. Return of withernam nulla bona.

I have taken in withernam 10 cows of the price of 40*l.* of the within-named *C. D.*, and delivered the same to the within-named *J. B.*, safely and securely to be kept until the other beasts within specified of him the said *C. D.* before taken, and to places to me unknown sent, as within I am commanded, and the within-named *C. D.* I have attached by his goods and chattels. *Fitz. Gage Deliv. 1. Dalt. 295.* Capi to the same writ, Wilk. 312.

The sheriff to this writ may return *tarde*. *Fitz. Journ. 34. Dalt. 295.*

If a replevy be of pots, pans, or the like, yet sheriff on withernam may take oxen, horses, or other cattle or goods. *Vide N. B. 45. Dalt. 296.* If a replevy be of pots, &c. sheriff to take others.

On a *nihil* returned, it is made a quære, whether the sheriff may attach the defendant without some special clause in the writ. *Greentw. 231.*

The sheriff may deliver the beasts or goods taken in withernam to the plaintiff to keep, or may keep them himself, or may drive or send them to any place within his county to be safely kept. The sheriff may deliver beasts, &c. to plaintiff to keep, or may keep himself. *New Return. Brev. 495.*

The sheriff may return, that he did not deliver the cattle to the plaintiff, for that he was not in the county. *Dalt. 295. Sed qu?* May return that he did not deliver.

He

May return cattle died.

He may return that the cattle taken died in the pound, before delivery of them to the plaintiff. *New Return. Brew. 496.*

By *Bracton* and *Britton*, the sheriff upon a *withernam* may take cattle or other goods to the double value. *Dalt. 295.*

Warrants.

Sheriff, &c. to make out warrants and to be according to the substance of the writ.

THE under-sheriff makes out warrants to the bailiffs, for the execution of the several writs directed to the sheriff, in the name of the high-sheriff, and these warrants must be according to the nature of the writ, which for the substance will direct them therein; if there be a recital in the writ, it need not be inserted in the warrant; but the warrant is to contain the mandatory part of the writ only. *Dalt.*

117.

If any sheriff, &c. deliver out a warrant before he has the writ in his custody, he forfeits 10 l. by stat. 6 Geo. 1.

What is necessary in the warrant.

Every warrant to have the same day and year plainly set down thereon, as shall be set down on the writ, under forfeiture of 10 l. *Ibid. 64. Vide p. 53.* and the attorney's name.

Warrants are now printed in blank ready to fill up, and may be had at the stationers in *Fleet-street*.

The form of warrants.

On an attachment of privilege in K. B.

Surry, } *E. F. esq;* sheriff of the county afore-
to wit. } said, To the keeper of the gaol of the
said county, and also to *John Dinn* and *Richard Fenn*, my bailiffs, greeting: By virtue of his majesty's writ to me directed, I command you and every of you, jointly and severally, that you or one of you attach *John King*, if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the king at *Westminster*, on *Wednesday* next, after the morrow of *All Souls*, to
answer.

answer *John Denn* gentleman, one, &c. in a plea of trespass, and also to a bill of the said *John Denn*, to be exhibited against the said *John King* for 100*l.* on promises according, &c. Hereof fail not. Given under my hand and seal of my office, dated the

day of 1799.

Writ dated the

day of

1799.

By the same sheriff.

Take bail for 50*l.* } Beware the defendant is not
Denn in person. } privileged, or protected, &c.

Surry, } E. F. esq; sheriff of the county afore- The like is the
to wit. } said, To, &c. (as before) attach common pass.

John Denn, so that I may have his body before the king's justices at *Westminster*, on *Wednesday* next after the morrow of *All Souls*, to answer *Richard Fenn* gentleman, one of the attornies of the court of common bench, according to the liberties and privileges of the same court for such attornies and other ministers of the same bench, from time out of mind used and approved of in the same, in a plea of debt. Hereof fail not. Given, &c.

By the same sheriff.

Take bail for 50*l.* }

Fenn in person. }

To, &c. so that I may have him before the king in his court of chancery, on the morrow of *All Souls*, wheresoever, &c. to answer his majesty, as well touching a contempt, which he, as it is alledged, hath committed against his majesty, and also such other matters and things as shall be then and there laid to his charge, and further to perform and abide such order as his majesty's said court shall make in this behalf. Hereof fail not. Given, &c.

On an attachment in the court of chancery for not answering.

By the same sheriff.

By the court for not answering at the suit of C. D.
Take bail for 40*l.* J. K. Solicitor.

Before the king's barons of his exchequer, at *Westminster*, on, &c. to answer, &c.

The like in the exchequer.

To, &c. attach *Richard Fenn*, gent. one, &c. so that I have him before the king's justices at *Westminster*, on next after

The like on an attachment of contempt against an attorney in C. P.

to answer his majesty, of and concerning those things which shall then on the king's behalf be objected against him. Hereof fail not. Given, &c.

By the same sheriff.

Insert the words at the foot of the attachment beginning with the name of the cause, as *Denn* against *Fenn, gent. one, &c.*

Warrant on a
habitat.

Surry, } *E. F.* sheriff of the county aforesaid, to
to wit. } the keeper of the gaol of the said county,
and also to *A. B.* and *C. D.* my bailiffs, greeting:
By virtue of his majesty's writ to me directed, I
command you, and every of you, jointly and severally,
that you, or one of you take *John King*, if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the lord the king at *Westminster*, on *Wednesday* next after the morrow of *All Souls*, to answer to *John Denn* in a plea of trespass, and also to a bill of the said *John Denn*, against the said *John King*, for 40*l.* upon promises according &c. Hereof fail not. Given under the seal of my office the day of

1799.

*Bail for 20*l.**

A. K. attorney.

By the same sheriff.

Warrant on a
non omittas.

If on a non omittas capias say, "command
" you that you omit not by reason of any liberty
" in my bailiwick, but that you enter the same
" and take, or one of you take, *J. K.*" &c.

On a bill of
Middlesex.

Surry, } As before, to answer *John Denn* in a
to wit. } plea of trespass, and also to a bill of the
said *John* to be exhibited against the said *Richard*
for 40*l.* on promises according, &c.

Warrant on a
special capias.

Surry, } As before, By virtue of his majesty's writ
to wit. } to me directed, I command you, and every
of you, jointly and severally, that you take, or one
of you take *John King* if he be found in my bailiwick,
and him safely keep, so that I may have his body before the lord the king, on the morrow of *All Souls*, wheresoever his majesty shall then be in *England*, to answer *John Denn* in a plea of trespass on

on the case, to the damage of the said *John Denn* of 40 l. Hereof fail not. Given, &c.

Bail for 20 l.

By the same sheriff.

As before, to answer *John Denn*, in a plea of trespass, and also that the said *John King* may answer the said *John Denn*, according to the custom of the king's court of common bench, in a certain plea of trespass on the case upon promises, to the damage of the said *John Denn* of 40 l. Hereof fail not. Given, &c.

Warrant on a capias in the C. P.

Bail for 20 l.

By the same sheriff.

Surry, } As before, to satisfy *John Denn*, as well a to wit. } certain debt of 500 l. which the said *John Denn*, lately in the king's court before the king himself at *Westminster*, recovered against the said *Richard Fenn*, as also 63 s. which in the said court were awarded to the said *John Denn* for his damages, costs, and charges; whereof the said *Richard Fenn* was convicted. Hereof fail not. Given, &c.

Ditto on a ca. fa. in debt.

Levy 253 l. besides poundage }
and officers' expences. }

As before, I command you, and every of you jointly and severally, that of the goods and chattels of *John Doe* in my bailiwick, you cause to be made as well a certain debt of 500 l. which *Richard Roe* lately recovered against the said *John Doe* in the king's court, before the king himself at *Westminster*, as also 63 s. which in the same court were awarded to the said *Richard* for his damages, costs and charges by him laid out about his suit in that behalf, whereof the said *John Doe* was convicted; so that I may have those monies before his majesty at *Westminster*, on *Wednesday* next after the morrow of *All Souls* to render to the said *Richard Roe*, for his debt and damages aforesaid. Hereof fail not. Given, &c.

Ditto on a ca. fa. in debt.

Levy 353 l. besides, &c. }
A. K. attorney. }

By the same sheriff.

As

Warrant on a ca.
sa. in case.

As before, to satisfy *John Denn* of 500 l. which the said *John Denn*, lately in our court before us at *Westminster*, recovered against the said *Richard Fenn* for his damages, which he sustained as well by means of not performing certain promises and undertakings lately made by the said *Richard Fenn*, to the said *John Denn*, as for his costs and charges, by him about his suit in that behalf expended; whereof the said *Richard Fenn* was convicted. Hereof fail not. Given, &c.

Levy 500 l. } By the same sheriff.
A. K. attorney.

Ditto on a fi.
sa. in case.

As before, that of the goods and chattels of *Richard Fenn*, in my bailiwick, you cause to be made 500 l. which *John Denn* lately in our court before us at *Westminster*, recovered against the said *Richard Fenn* for his damages which he sustained, as well by means of the not performing certain promises and undertakings lately made by the said *Richard Fenn* to the said *John Denn*, as for his costs and charges, by him about his suit in that behalf expended, whereof the said *Richard Fenn* was convicted, so that I may have that money before his majesty at *Westminster*, on next after to render to the said *John* for his damages, costs and charges aforesaid. Hereof fail not. Given, &c.

Ditto on an
elegit.

Levy 500 l. By the same sheriff.
Middlesex, } *John Denn*, esquire, and *Richard*
to wit. } *Fenn*, esquire, sheriffs of the said
county, to I. K. and B. C. my bailiffs, greeting:
By virtue of his majesty's writ of *elegit* to me directed, I command you and each of you, jointly and severally, that without delay, you, or one of you, seize and take all the goods and chattels of *Richard Roe*, (except the oxen and beasts of his plough,) in my bailiwick, of which the said *Richard Roe* on the day of in the 39th year of the reign of his present majesty was or at any time since hath been seised, so that I may by the oath of good and lawful men of my bailiwick, cause the same to be extended and appraised, and the

the said goods and chattels to be delivered to *John Doe* in the said writ named, to hold to him, as his own proper goods and chattels, towards satisfying his debt and damages in the said writ mentioned, and that you forthwith certify the same to me, so that I make the same appear before the lord the king at *Westminster* on *Wednesday* next after the morrow of *All Souls*. Hereof fail not. Given, &c.

Levy 500*l*.

By the same sheriff.

To *A. B.* my bailiff of the hundred of *C.*

Surry, } *E. F.* esquire, sheriff of the county
to wit. } afore said, by virtue of his majesty's writ
to me directed, I command you, that you summon *C. D.* to appear before (a) the barons of his majesty's exchequer at *Westminster*, on next coming, to answer *C. D.* his majesty's debtor, of a plea of trespass on the case, whereby, &c.
Dated, &c.

Warrant on a venire facias in the exchequer.

By the same sheriff.

To *A. B.* my bailiff of the hundred of *C.*

Surry, } *E. F.* esquire, sheriff of the county afore-
to wit. } said, by virtue of his majesty's writ to
me directed, I command you that you distrain *C. D.* by all his lands and chattels in my bailiwick, so that neither he, nor any person for him, lay their hands upon the same, until I have another command thereof from his said majesty, and that I may answer to his majesty for the issues thereof, so that the said *C. D.* be before the barons of his majesty's exchequer at *Westminster*, in next coming, to answer *C. D.* his majesty's debtor in a plea of trespass on the case, whereby, &c.
Dated, &c.

Ditto on a distringas in the exchequer.

By the same sheriff.

Middlesex, } As in the other, so that he be before
to wit. } the lord the king, on the morrow of
All Souls wheresoever his majesty shall then be in *England*, to answer *H. H.* of a plea of trespass on the case to the damage of the said *H.* of 300*l*.
Dated, &c.

Ditto in the king's bench by original.

A. K. attorney.

(a) If in the *C. P.* on an original say, before his majesty's justices at *Westminster* on the morrow of *All Souls*, to answer *C. D.* in a plea of trespass, Dated, &c.

As

Warrant on a
sci. fa. at the suit
of the king
in the exche-
quer.

As before, That you give notice to *A. B.* that he may appear before the barons of his majesty's exchequer at *Westminster*, on next coming, to shew cause why his majesty should not have execution against him for 100 *l.* which his majesty recovered against him, according to the tenor of the said writ. Hereof fail not. Dated, &c.

The like in the
king's bench.

As before, That you give notice to *A. B.* that he may appear before the king at *Westminster* on *Wednesday* next after the morrow of *All Souls*, to shew cause why *G. D.* should not have his execution against him for 50 *l.* debt, and 63 *s.* damages, which he recovered against him in his majesty's court before the king himself, according to the tenor of the said writ. Hereof fail not. Dated, &c.

The like on a
sci. fa. against
bail by bill.

As before, That you give notice to *G. D.* and *E. F.*, bail of *C. D.*, that they may appear before the king at *Westminster*, on *Wednesday* next after the morrow of *All Souls*, to shew cause why *A. B.* should not have execution against them for 100 *l.* damages, recovered against the said *C. D.* in his majesty's court, before the king himself at *Westminster*, according to the force, form and effect of a certain recognizance acknowledged by them the said *G. D.* and *E. F.* for the said *C. D.* in the said court. Hereof fail not. Dated, &c.

By the same sheriff.

To, &c. my bailiff of, &c.

Warrant on the
long writ, No.
5 on the distrin-
gas, precepts is-
sued out of the
exchequer.

Middlesex, } By virtue of his majesty's writ to me
to wit. } directed, I command you, and every
of you jointly, &c. that you or one of you levy of the goods and chattels, lands and tenements in my bailiwick, of the persons named in the schedule hereunto annexed, the several sums of money set against their respective names, and which are on them respectively charged, in the schedule to the said writ annexed; so that I may have the said money before the barons of his majesty's exchequer at

at *Westminster*, from time to time as the same shall be levied; and if the goods and chattels, lands and tenements of the said several persons are not sufficient for the payment of the said several sums of money, then take the bodies of the said several persons (*peers* and *peeresses* excepted) and keep them in safe custody until they shall fully satisfy his majesty the said debts. You shall also distrain the several executors and administrators of such of the said persons as are dead, and the possessors of the goods and chattels which were theirs at the times of their respective deaths, and likewise the heirs and terretenants of the lands and tenements which they were seised of, on the several days, in the several years when they respectively first became indebted to his majesty, the several sums in the said schedule respectively mentioned, or at any time since, by all their lands and chattels in my bailiwick, so that they, nor any for them, lay hands thereon, until I shall otherwise command you, so that I may answer to his majesty the issues of the said lands; and so that I may have their bodies before the barons of his majesty's *exchequer* at *Westminster*, on, &c. to answer to his majesty the several debts respectively charged upon them in the said schedule: And what you shall do herein make known to me. Dated, &c.

To, &c. By virtue of his majesty's writ to me directed, I command you and every of you, &c. that you omit not, &c. that you levy of the goods and chattels in my bailiwick, of the several persons named in the schedule hereto annexed, the several sums of money set against their respective names, and which are charged upon them, and each of them, in the schedules to the said writ annexed, or required from them, or any of them, so that I may have that money before the barons of his majesty's *exchequer* at *Westminster* without delay; and if the said goods and chattels of the said persons, or any of them, are not sufficient for payment of the said several sums of money set against their

Warrant on the long writ process, No. 5, against persons for recognizances forfeited and arrears of taxes.

respective names, and charged upon them as aforesaid, then take the bodies of the said several persons, and each of them, not having any goods sufficient as aforesaid, (*peers, lords and ladies only excepted,*) wheresoever you shall find them in my bailiwick, so that I may keep them in safe custody in his majesty's prison, until they have fully satisfied his majesty the several debts charged upon them, and each of them, in the said schedules. You shall also distrain all the lands and chattels in my bailiwick, of all the executors of the several last wills and testaments of the said several persons deceased, and of each of them. Also the lands and chattels of the heirs and tenants of the lands and tenements which were lately theirs, so that I may have their bodies before the barons of his majesty's *exchequer* at *Westminster* on the morrow of *St. Martin* next ensuing, to answer to his majesty, for the said several persons, the several debts aforesaid, and what you shall do herein forthwith make appear to me. Dated, &c.

Warrant on a
capias utlagatum.

Middlesex, } *J. B.* esquire and *V. U.* esquire, sheriff
to wit. } of the county aforesaid, to *John Doe*
and *Richard Roe*, my bailiffs of the hundred of
Ossulston in the said county, greeting: By virtue
of the king's writ to me directed, I command you
and every one of you, jointly and severally, (notwithstanding any liberty in my county, that you enter the same; and,) that you, or any one of you, take all the goods and chattels, lands and tenements, of *Richard Fenn*, who stands outlawed at the suit of *John Denn*, so that by the oath of good and lawful men of the said county, I may diligently enquire of the goods and chattels, lands and tenements of the said *Richard Fenn*, by you so taken; and by appraisement, according to the true value thereof, I may cause the goods and chattels aforesaid to be seized and taken into his majesty's hands; and what you, or any one of you, shall do herein, you, or one of you, shall forthwith make known to me, so that I may thereof certify his majesty's justices

justices at *Westminster* on the morrow of *All Souls*; and I further command you, and every one of you, notwithstanding any liberty in my county, that you enter the same, and that you, or any one of you, do take the said *Richard Fenn*, if he shall be found in my bailiwick, and him safely keep, so that I may have his body before his majesty's said justices, at the day aforesaid, to do and receive what the king's court shall adjudge concerning him in this behalf. Dated the 20th day of *September*, 1799.

By the same sheriff.

That you forthwith arrest the body of *A. B.*, and keep him safe, until he find sufficient bail or security for the sum of 500 *l.* that he will not go, or attempt to go, into parts beyond the seas, without leave of his majesty's court of *Chancery*; and in case he refuse so to do, I command you, each and every of you, that you commit him to his majesty's next prison within my bailiwick, there to be kept in my custody, until he shall do it of his own accord. Dated, &c.

Warrant on a
replevin return.

Bail for 500 *l.*

By the same sheriff.

To *A. B.* and all other my bailiffs.

Surry, } Quit possession of the goods and chattels
to wit. } of *A. B.* notwithstanding my warrant
to you, or any of you directed, grounded on a writ
of *fi. fa.* to me directed, returnable before the
lord the king at *Westminster*, on *Wednesday* next af-
ter the morrow of *All Souls*, at the suit of *J. K.*
for 100 *l.* debt, and 63 *s.* damages. Indorsed to
levy 53 *l.* 19 *s.* besides officers fees, sheriff's poun-
dage, &c. *J. K.* attorney. And for your so do-
ing, this is your warrant. Dated, &c.

Warrant to quit
possession on a
fi. fa.

Surry, } To *A. B.* and *C. D.* my bailiffs, &c.
Summon *C. D.* that he be and appear before the
king on the morrow of *All Souls*, wheresoever, &c.
to answer *J. K.* in a plea of trespass on the case,
to the damage of the said *J. K.* of 100 *l.* Dated,
&c.

Summons on a
special original.

Oxon, } *T. B.* esq; sheriff of the county afore-
to wit. } said, to the keeper of his majesty's gaol

Warrant on a
superedeas to
discharge the de-
fendant out of
custody.

of the said county. Discharge out of your custody the body of *W. W.* if detained only at the suit of *C. C.* by virtue of a writ of *latitat*, issued out of his majesty's court of *king's bench*, at *Westminster*, and returnable there, on next after to answer the said *C. C.* in a plea of trespass, and also to a bill of the said *C. C.* for 100*l.* upon promises, bail for 50*l.* And for your so doing this shall be your warrant. Given, &c.

By the same sheriff.

Summons on a writ of dower.

Oxon, } *G. A.* esq; sheriff of the county afore-
to wit. } said, to *T. B.* and *C. D.* my bailiffs,
greeting: By virtue of his majesty's writ to me directed, I hereby command you, that you command *C. L.* and *J. K.* that they justly, and without delay, render to *A. B.* and *J.* his wife, the reasonable dower of the said *J.* which falleth to her out of the freehold which was of *T. M.* heretofore her husband, in the parish of *St. Mary's* in *B.* whereof she hath nothing, so they say, and whereof they complain, that the aforesaid *C. L.* and *J. K.* now defendants, deforceth them, and unless they shall so do, and the said *B. B.* and I shall give me security, that their suit shall be prosecuted, then summon, by good summoners, the said *C. L.* and *J. K.* now defendants, that they be before the justices of our lord the king at *Westminster*, in to shew wherefore they will not do it. Hereof fail not. Given, &c.

To, &c.

By the same sheriff.

On a writ of summons against a member.

Oxon, } Summon *G. P.* esq; (having privilege of
to wit. } parliament,) that he be before his majesty
at *Westminster*, on next after to answer *J. K.* in a plea of trespass on the case, upon promises, to the damage of the said *J. K.* of 50*l.* Hereof fail not. Given, &c. By the same sheriff.

Warrant on a distringas against a member.

Oxon, } *G. K.* esq; sheriff of the county afore-
to wit. } said to *A. B.* my bailiff, greeting: By
virtue of his majesty's writ to me directed, I command you, that you distrain *J. K.* esq; having privilege of parliament, by all his lands and chat-
tels

tels in my bailiwick, so that neither he, nor any person for him, may lay their hands upon the same, until I have another command thereof from his said majesty, and that I may answer to his said majesty for the issues thereof, so that the said *J. K.* be before his majesty in wheresoever, &c. to answer *C. D.* of a plea of trespass on the case, to the damage of the said *C. D.* of 50*l.* Hereof fail not. Given, &c.

Oxon, } *A. K.* esq; sheriff of the county afore- On a writ of
to wit. } said, to *A. B.* and *C. D.* my bailiffs, possession.
&c. greeting: By virtue of his majesty's writ of *habere facias possessionem*, to me directed, I command you, that you deliver unto *John Doe* possession of his term yet to come, of and in one messuage, &c. (here set forth the premises,) with the appurtenances in the parish of *H.* in the said county, which the said *John Doe* hath recovered against *Richard Roe* in his majesty's court, before the king himself, and render me an account herein, so that I may make the same appear before the king at *Westminster*, on next after
Hereof fail not. Given, &c. By the same sheriff.

To *B. K.* my bailiff.

Middlesex, } Give notice to *A. B.* to be and appear Warrant on a
to wit. } before the king's justices at *Westmin- point in replevin*
ster, on the morrow of *All Souls*, that he may be there ready to proceed in the plaint which is in my county, without the king's writ, between the said *A. B.* plaintiff, and *C. D.* defendant, of the goods and chattels of the said *A.* taken, and unjustly detained, as it is said. Dated, &c.

Berks, } *E. R.* esq; &c. to *J. P.* and *J. R.* my To summon the
to wit. } bailiffs, greeting: By virtue of his ma- inhabitants of
jesty's writ to me directed, I command you, and the hundred of
each of you, that you summon the inhabitants of &c. on statute of
the hundred of *R.* in the county aforesaid, to be hue-and-may
and appear before our sovereign lord the king, (on on an original.
the return,) wheresoever, &c. to answer as well to our said lord (the king, as to *G. G.* in an action brought against the said hundred, on a statute

made in the 13th year of the reign of his late majesty king *Edward* the I. for a robbery committed on him the said *G. G.* in the parish of *T.* and hundred of *R.* aforesaid, for, &c. (a) in monies numbered, being the proper monies of the said *G. G.* And this, &c. Given, &c.

Summons from the bailiff to a person to serve on the grand jury at sessions.

Berks, ff. By virtue of a warrant from *E. S.* sheriff, &c. I do hereby summon and warn you to be, and appear before the justices at the next general quarter sessions of the peace, to be holden at *A.* in the said county, on *Tuesday* the second day of *October* next, at 10 o'clock in the forenoon, then and there to serve on the grand jury. Dated, &c.

A. B. bailiff.

Warrant on a writ of excommunicato capi-endo.

Berks, ff. *E. S.* esq; sheriff, &c. to *J. B.* &c. my bailiffs, greeting: By virtue of the writ of our sovereign lord the king to me directed, I command you, and every of you, that you or one of you attach *G. L.* by his body, according to the custom of *England*, if he shall be found in my bailiwick, and him under safe and secure conduct, lead, or cause to be led to the gaol of our said lord the king, for my county there, in prison to be safely kept, until he shall have made satisfaction to the holy church, as well for the contempt, as for the injury by him done unto it: And how you shall execute this warrant, forthwith make appear to me, so that I may certify the same to his majesty, from the day of *Saint Michael* in three weeks wheresoever his majesty shall then be in *England*, that his said majesty may cause further to be done in the premises what of right, and according to the form of the statute in such case lately made and provided, shall be meet to be done, &c. Given, &c.

Warrant on attachment of contempt and proclamation for not putting in an answer in the court of chancery.

Berks, ff. *E. S.* esq; &c. to the keeper of the gaol of the said county, and also to *A. B.* and *G. D.* my bailiffs, greeting: By virtue of his majesty's writ to me directed, I command you, and each of you, jointly and severally, that you or one of you do, on his majesty's behalf, make pro-

(a) Follow the words of the original.

clamation

clamation in all places within my bailiwick, as well within liberties, as without, wheresoever it shall seem meet; that *F. G.* clerk, do upon his allegiance in 15 days after *St. Martin* next ensuing, personally appear before the king, in his court of *chancery*, on _____ and in the mean time, if you can find him the said *F. G.* attach him, so that I may have his body before the said lord the king, in his said court, at the time above-mentioned, to answer his majesty, as well touching a contempt which he hath, as it is alledged, committed against his said majesty, as touching those matters which shall be then and there objected against him, and further, to perform and abide such order as his majesty's said court shall make in this behalf, &c. Given, &c.

Take the words
of the writ.

Berks, *J. J. G.* esq; sheriff of the county aforesaid, to the keeper of the gaol of the said county, and also to *S. H.* and *P. H.* my bailiffs, for this purpose only, greeting: By virtue of the writ of our sovereign lord the king, to me directed, I command you, and each of you, jointly and separately, that you omit not by reason of any liberty in my bailiwick, but that you enter the same, and take *B. H.* if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the barons of his majesty's *exchequer* at *Westminster*, on the _____ day of _____ next, to answer his majesty, concerning certain articles, whereon he is impeached, by an information exhibited against him before the said barons, by his majesty's attorney-general, for the forfeiture of 607 *l.* 7 *s.* for the offence in the said information mentioned, &c.

On an excise
process out of
the exchequer.

Bail for 202 *l.* 10 *s.*

By the same sheriff.

S. S. solicitor for the excise.

Berks, *J. J. G.* Esq; sheriff, &c. to the keeper of the gaol of the said county, greeting: By virtue of his majesty's writ to me directed, I command you, that you have the body of *E. W.* detained in my prison under your custody, by whatsoever name

On habeas cor-
pus ad testifican-
dam.

he may be charged in the same, under safe and sure custody, before the justices of the lord the king, assigned to hold the assizes in and for the county of *Berks* at the town of *Abingdon* in the said county, in the *great hall of pleas*, there on *Monday* the 24th day of *July* next, by nine of the clock in the forenoon, then and there to testify the truth according to his knowledge in a certain cause now depending before the king's justices, and then and there to be tried between *I. C.* plaintiff, and *I. S.* defendant, on the part of the said *I. C.*, and immediately after the said *E. W.* shall have then and there given his testimony before the said justices, to return him the said *E. W.* to the said prison under the like safe and secure conduct. Herein fail not. Given, &c.

Fees to the sheriffs of counties for warrants.

The sheriff cannot charge more than 2 s. 4 d. on any warrant upon a *special capias*, summons, or original bill, *venire* out of the *exchequer*, *scire facias*, *ne exeat regno*, *supersedeas*, *venditioni exponas*, attachments, *dislingas*, *elegit*, *fieri facias*, *capias ad satisfaciendum* or other execution, though he recite his whole writ.

But on writs of *non omittas*, and *capias* issued for the king's debt on customs or excise forfeitures, they charge 5 s. in the country.

On a *latitat* or *capias* they charge 2 s. for a warrant. *Surry*, *Essex*, and *Kent*, 6 d. If there is a discharge to the gaoler on a *supersedeas*, 2 s. 4 d.

	£.	s.	d.
For attending to strike a special jury	2	2	0
For a view - - - -	2	2	0
Attendance at the trial - -	1	1	0
For summoning a jury upon a commission of lunacy	2	2	0
For an inquisition on a writ of enquiry in <i>Middlesex</i>	1	11	6
— in <i>London</i> - - -	1	10	4
Inquisition on outlawry (one finding)	1	15	6
<i>Elegit</i> do.	1	15	6
<i>Extent</i> do.	1	15	6
For more than one finding -	0	3	4

APPENDIX.

An Indenture for setting over Prisoners and Writs between the old and new Sheriff.

THIS Indenture, made the day of in the
 year of the reign of our sovereign lord *George* the
 third, by the grace of God, of *Great Britain, France and Ireland*
 king, defender of the faith, &c. and in the year of our Lord
 between *J. O.* esquire, late sheriff of the county of *Oxford*
 of the one part, and *W. K.* esquire, present sheriff of the said
 county of the other part, Witnesseeth, that the said late sheriff
 hath delivered, and the said present sheriff hath received, from the
 said late sheriff, at the time of his going out of his office, the
 bodies of the several persons herein-after named, charged with the
 cause or causes herein-after mentioned, (that is to say,) *A. B.* was
 taken the 27th day of *February* 1799, by virtue of a writ of *Capias*
ad Satisfaciendum, returnable before the king's justices at *West-*
minster in fifteen days from the day of *Easter*, to satisfy *C. D.*
 for 100*l.* which in the king's court before the king's justices at
Westminster were awarded to the said *C. D.* for his damages,
 &c. whereof the said *A. B.* is convicted—*Corbet and Hardy*—
 he is detained by virtue of another writ of *Capias ad Satisfaciendum*,
 returnable before the lord the king at *Westminster* on *Monday*
 next after the morrow of the *Ascension*, to satisfy *T. H.* for 100*l.*
 which in the king's court before the king himself at *Westminster*
 were awarded to *J. H.* for his damages, &c. whereof the said *A. B.*
 is convicted—*Johnson* for *Hatt*—he is also detained by virtue of a
 writ of attachment, returnable before the barons of the king's
 Exchequer at *Westminster*, on the day of
 last to answer the lord the king concerning divers trespasses, con-
 tempts, and offences by him lately done and committed, at the
 suit of *R. I.* for not paying the several sums of, &c. making
 together the sum of 200*l.* cost taxed—*Lane.*

stituted, and appointed, and by these presents *Do* make, ordain, constitute, and appoint *C. D.* of, &c. and *E. F.* of, &c. gentlemen, my true and lawful attornies, jointly and severally, for me, and in my name, to ask, demand, and receive of and from the lords commissioners of his majesty's treasury, or of or from any other person or persons concerned in his majesty's receipt or exchequer, the said sum of 90*l.* 5*s.* and for me, and in my name, to give such receipt or acquittance for the same as in such case is usual; And further to do and perform all such other matters, and things as shall be necessary in his behalf. In witness, &c.

Sealed, &c.

Indenture of Covenants between the High-Sheriff and Under-Sheriff.

THIS Indenture made the _____ day of _____ in the _____ year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France and Ireland*, king, defender of the faith, and so forth; and in the year of our Lord 1786, between the right worshipful *C. A.* and *R. G.* esquires, two of the aldermen of the city of *London*, of the one part, and *J. R.* of _____ *London*, gentleman, of the other part, Witnesseth, that they the said *C. A.* and *R. G.* being elected and chosen, and having on the day of the date hereof, taken the office of sheriff of the county of *M.* for the whole year, commencing from the day of the date hereof; in consideration of the assured hope and trust which they the said *C. A.* and *R. G.* have, that the said *J. R.* and *C. B.* will take care that the office of under-sheriff, be honestly, uprightly, duly and sufficiently discharged within the said county of *M.*, and that the said sheriff shall be free and discharged from all charges and damages whatsoever relating to the said office; and for the considerations hereafter in these presents mentioned, they the said *C. A.* and *R. G.* have been pleased and contented to depute, ordain, constitute and make the said *J. R.* and *C. B.* to be their under-sheriff of the said county of *M.* for the same time and term, and so long as they or either of them shall continue in the said office; but nevertheless, so as that the said office of under-sheriff shall be executed by and with the joint concurrence and direction of them the said *J. R.* and *C. B.* and not otherwise, and also subject to the proviso or power hereinafter mentioned, of displacing, or removing the said *J. R.* and *C. B.* from the said office of under-sheriff, as hereinafter is mentioned. And the said *C. A.* and *R. G.* the more effectually to empower the said *J. R.* with the concurrence of the said *C. B.* as aforesaid, to execute the said office of under-sheriff of the said county of *M.* have, and each of them *hath* (as much as in them

them lieth, and they lawfully may) authorized, constituted, deputed, and *do*, and each of them *doth*, authorize, constitute, depute, and appoint him the said *J. R.* and all and every such clerk and clerks as he the said *J. R.* with such concurrence as aforesaid, shall employ and appoint in the said office of undersheriff, by writing, under the hand and seal of the said *J. R.* in the name of them the said *C. A.* and *R. G.* as sheriff of the said county of *M.* upon the request of any plaintiff or plaintiffs, to sign, seal, execute, and as their act and deed deliver; and all and every assignment and assignments of any bail-bond and bail-bonds, that shall or may, at any time or times hereafter, during their sheriffalty, be taken in their names as sheriff of the said county of *M.* from any defendant or defendants, by virtue of any writ, precept or precepts, or mandate whatsoever, which shall be directed to them for the execution thereof; and also for such deputy or deputies to take any inquisitions requisite on all process requiring the same, and as shall be directed to the sheriff of the county of *M.* during the sheriffalty of the said *C. A.* and *R. G.* in consideration whereof, and for other good causes and considerations, them thereunto moving, they the said *J. R.* and *C. B.* for themselves severally, and for their several and respective heirs, executors, and administrators, *do*, and each of them *doth*, covenant, promise, and grant, to and with the said *C. A.* and *R. G.* respectively, and their respective executors and administrators, by these presents, in manner following, (that is to say,) that he the said *J. R.*, with such concurrence as aforesaid, shall well and truly, honestly and sufficiently, by and during the said term and time, and so long as the said *C. A.* and *R. G.*, or either of them, shall continue in the said office of sheriff of the said county of *M.* execute and duly perform the same carefully, well, truly and honestly, demean and behave himself therein, and shall, during the said time and term, well, truly, honestly, and sufficiently, with the concurrence of the said *C. B.* as aforesaid, execute, or cause and procure to be executed, all and every writ and writs, process and processes, warrant and warrants, precept and precepts, mandate and mandates, directed, or to be directed, from our sovereign lord the king, his heirs or successors, and from and out of all and every or any of his majesty's courts at *Westminster*, or any other courts elsewhere, or otherwise, or from any commissioner or commissioners, justice or justices of the peace, or other person or persons, officer or officers, which have or shall have authority thereunto, to the said sheriff of the said county of *M.* which during the said time or term shall be or to be executed; and of the same and every of them, in all due, fit, and convenient time, shall make true and sufficient returns at the several days, times, and places according as the said *C. A.* and *R. G.* by the said writs, processes, warrants, precepts, and

and mandates, or any of them, is or shall be required, limited, or appointed to return the same; and shall also by and during the said time and term, and at all times afterwards, save, keep harmless, and indemnified, the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, and administrators, and their and each of their goods, chattels, lands, tenements, hereditaments, and estate and every part and parcel thereof, of and from all manner of action and actions, cause and causes of actions, suits, fines, and amerciaments, pains, sum and sums of money, penalties, contempts, forfeitures, judgments, executions, damages, costs, and losses, and of and from all and every other troubles, charges, and incumbrances whatsoever, that shall or may happen, arise, grow, put unto, or shall be assessed, imposed, set, or taxed upon or against the said *C. A.* and *R. G.* or either of them, or upon the sheriff of *M.* at any time or times, for or by reason of the executing, not executing, returning, not returning, or mis-returning, or the not due returning or executing of any of the said writ or writs, process or processes, mandate or mandates, precept or precepts, warrant or warrants, or by reason of any suits or disputes as may hereafter arise between the said *J. R.* and *C. B.* or either of their executors, or administrators, and without any trouble, costs, charges, damages, or expences, therefore to be sustained, incurred or expended by the said *C. A.* and *R. G.* or either of them, their or either of their executors or administrators, in, about, for, touching or concerning the same; and shall also from time to time, and at all times hereafter, give notice unto the said *C. A.* and *R. G.* of all and every writ or writs that shall be sued or brought against them, or either of them, that shall come to the said *J. R.* and *C. B.* or either of them, their, or either of their deputies, clerks, or servants; or whereof the said *J. R.* and *C. B.* or either of them shall have notice, and shall not appear, or cause any appearance to be made or entered, or any common bail to be filed upon any writ or action, that shall be brought against the said *C. A.* and *R. G.* or either of them, without the privity or allowance of them the said *C. A.* and *R. G.* or such of them, against whom any such writ shall be brought; And further, that the said *J. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, or any other person or persons for or under them, or either of them, in the name or names of the said *C. A.* and *R. G.* or either of them, shall not, any time or times hereafter, during the said term or terms, make, or cause to be made, any return or returns, of or to any writ or writs, process or processes, precept or precepts, warrant or warrants, mandate or mandates whatsoever, touching or in any wise concerning, the liberties or franchises of the city of London, in the name or names of the said *C. A.* and *R. G.* as sheriff of the said county of *M.* without timely acquainting them the said *C. A.* and

and *R. G.* therewith, and taking and pursuing their just and lawful directions therein, if they upon or after such notice in due time give such directions therein; *And also*, that they the said *J. R.* and *C. B.* or one of them, their, or one of their executors or administrators, shall and will, at all times hereafter, acquit and discharge, or otherwise well and sufficiently save, keep harmless and indemnify the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, and administrators, and their, and each of their goods and chattels, lands, tenements, and estates, of and from all and every suits, charges, losses, payments, damages, fines, amerciaments, and hindrances whatsoever, that shall or may, at any time or times, during the said time they shall continue in said office, or at any time then after, arise, happen, grow, or come unto, or be brought against them the said *C. A.* and *R. G.* or either of them, their, or either of their heirs, executors, or administrators, goods, chattels, lands, or tenements, for or by reason of any rescue or rescues, escape or escapes, or letting any prisoner or prisoners, voluntarily, or negligently, or otherwise, to go at large or escape, or for not taking sufficient bond or bonds, with sufficient and good security; or for persons arrested or to be arrested; or of or for prisoners bailable, or of refusing to accept of bond or bonds, in such manner as by law is or shall, during the sheriffalty of the said *C. A.* and *R. G.* be required of any person or persons arrested, or to be arrested, for any matters or causes, for which he, she, or they, shall or should be bailed by law; or for the making, or making amiss, or not due making of all or any assignment, of all or any bail-bond or bail-bonds; or for not putting any warrant or warrants of attorney, in any of the courts of record at *Westminster*, or elsewhere; for or by reason of any negligence, mis-feazance or mis-feazances, non-feazance or non-feazances, abuses, misdemeanors, commission or commissions, omission or omissions, default, delay, or contempt; or for or by reason of any other matter, cause, or thing, that should or ought, at any time, in any kind whatsoever, to be done and performed by the said *J. R.* and *C. B.* or either of them, as under-sheriff of the said county of *M.*, or by their, or either of their deputy or deputies, clerk or clerks, bailiff or bailiffs, servant or servants, or by reason of his, or their, or any of their not doing, over-doing or neglecting, his or their duty or duties; or for or in respect of any matter, cause, or thing whatsoever, hereafter to be done or omitted to be done, by him, them, or any of them, concerning the said office: *And moreover*, that they the said *J. R.* and *C. B.*, or one of them, shall from time to time, and at all times when thereunto required, as soon as conveniently may be, during the said time and term, and until the said *C. A.* and *R. G.* shall be duly discharged from the said office of sheriff, deliver, or cause to be delivered, unto the said *C. A.* and *R. G.*, or one of them,

a true

a true account or inventory in writing, of all extents, and judicial writs, or process whatsoever, that shall come to the hands of the said *J. R.* and *C. B.* or either of them, or of their, or either of their agent or agents, clerk or clerks, deputy or deputies, or any person or persons appointed to act for, by, or under them, or any of them, to be executed with the teste and return of the same, and the sums of money therein specified, and the name or names of the person or persons, against whom such writ or writs, process or processes, shall be issued; and the person or persons for whom all and every, or any such writ or writs, process or processes shall be issued, and what is done upon all and every or any such writ or writs, process or processes; and that they the said *J. R.* and *C. B.* or one of them, shall and will, in the space of ten days next after the levy or receipt by them, or either of them, or their, or either of their deputies, shall be made of any sum or sums of money, upon or by virtue of such extents or judicial writs, process or processes, if thereto required, pay, or cause to be paid, the said sum or sums of money, to the said *C. A.* and *R. G.* or one of them, or to such person or persons as they shall from time to time nominate and appoint to receive the same, they the said *C. A.* and *R. G.* or one of them, giving a note or precept in writing, under his or their hand or hands, testifying the receipt of all such sum or sums of money, as shall be by them, or either of them, so received: And, that it shall be in the power of the said *C. A.* and *R. G.* notwithstanding any thing in these presents contained, upon complaint to them made of the miscarriage of any bailiff, within the said county of *M.* in the duty of his place, to put out, discharge, and displace any such bailiff from his further employment as bailiff, for so much of the said time as shall be then to come: And likewise, that the said *J. R.* and *C. B.* or one of them, shall and will, from time to time and at all times hereafter, give due notice to the said *C. A.* and *R. G.* of all such personal attendances as shall from time to time be required, or requisite to be made by the said *C. A.* and *R. G.* or either of them in the county of *M.*, as sheriff of the said county, and be attending on and assisting to the said sheriff, wherein such personal attendance shall be required; and that the said *J. R.* and *C. B.* and each of them shall be aiding and assisting in the raising and levying such force of men, horses, and arms, within the said county of *M.* as the said *C. A.* and *R. G.* shall be enjoined to raise, and levy; and shall from time to time, and at all times, as occasion shall be and require, give their personal attendance on the said *C. A.* and *R. G.* and each of them, for their doing, performing, and executing all such thing and things as shall be requisite on their behalf: And further, that the said *J. R.* and *C. B.* shall, during the said term or time, well, truly, and faithfully do, execute and perform,

perform, all and every act and acts, matters, thing and things whatsoever, incident or belonging to the said office of under-sheriff of the said county of *M.* and to the utmost and best of their means, skill and power, shall, and will, well and truly levy, collect and gather all and singular such sum and sums of money as do in any wise concern or belong to the said sheriffalty, or sheriff of the said county of *M.* and also post-fines, *pro licentia concordandi*, forfeitures, profits, seizures, fee-farm rents, pipe silver, exchequer silver, extracts of all goods of traitors, felonious persons, out-laws, and all and every such sum and sums of money, forfeitures, entries and demands whatsoever, as shall be at any time or times extracted, charged, or imposed for the use of our sovereign lord the King, his heirs and successors, or for or by reason of any extracts of writs, process of green-wax, or otherwise, directed out of the court of Exchequer, or Crown-office, or any of the courts of record at *Westminster*, or elsewhere, and commanded, directed, or appointed to be levied or gathered by the said sheriff of the said county of *M.* and of the same, and of every of them, and every part thereof, shall in due time, from time to time, make a true and just account, and due satisfaction and payment thereof, to the use of our sovereign lord the King, his heirs and successors, into the receipt of the Exchequer, by tally or tallies, in due form, or into such other courts as the case shall require; *and also*, shall take of the Pell-office a *constat* of every such payment and tally struck; and shall likewise take out and obtain all other acquittances, meet and necessary for the manifestation of any such payment as the case shall require, and all such constats and acquittances shall and will from time to time deliver to the said *C. A.* and *R. G.* or one of them, within six days after every or any such payment made, if thereunto required; *and* shall also from time to time from thenceforth, keep harmless and indemnified the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, and administrators, and their, and each of their goods, chattels, lands, tenements, and estates, of from and against our said sovereign lord the King, his heirs and successors, in respect of all and every sum and sums of money to be had, levied, or received, by the said *J. R.* and *C. B.* or elther of them, for the use of our sovereign lord the King, his heirs or successors, or which ought to be had, levied or received by him the said *J. R.* as under-sheriff, or by the said *C. A.* and *R. G.* as sheriff of the said county of *M.* to and for the use of our sovereign lord the King, his heirs or successors: *And moreover*, that the said *J. R.* and *C. B.* or one of them, their, or one of their executors, administrators, or assigns, shall and will, at his or their own proper costs and charges, in and by all things join with the secondaries for the time being, for both the Compters of *London*,

don, and with all other clerks appointed, or to be appointed by the said *C. A.* and *R. G.* as sheriffs of the city of *London*, for supplying the said office of under-sheriffs of *London*, commonly called by the name of secondaries of the Compters of *London*, or the sheriffs clerks, for the orderly and duly proceeding for the passing the accounts for *London* and *Middlesex*, in one account, according to the statute or statutes in that case made and provided, touching sheriffs accounts; And shall and will without delay jointly proceed in the said accounts, in one, as well as the particulars thereof, with the auditor or auditors assigned to take the said accounts, as also in passing thereof in one by the like agreement and consent, and also in the declarations thereof before the barons of the said court of Exchequer, and before any other person or persons to be thereunto authorised, and being ready for the declaration thereof, shall also, at the like proper costs and charges of the said *J. R.* and *C. B.* or one of them, procure the said auditor and auditors to attend some or one of the barons to take the said declaration, and to make the usual allowances of the said accounts, for so much thereof as appertains to the said sheriff or county of *M.* and also subscribe the whole accounts of *London* and *Middlesex*. and the duplicate thereof, to the end that one part thereof, which shall be the charge remaining with our sovereign lord the king, and the lord treasurer, and commissioners of the treasury, and the remembrancer of the exchequer, may be answered with the other part and duplicate thereof, subscribed by some of the officers of the exchequer for the said sheriff; all which shall be solicited and followed, to be got, and shall be got, finished, and effectually perfected, by the said *J. R.* and *C. B.* or one of them, at their or one of their own proper costs and charges, for so much thereof as shall concern the said county of *M.* and in all offices and places through which the same ought duly to pass; and that the same shall be performed and done with due speed, and without delay and unnecessary intermission, and shall be done and brought to the Pipe-office in that due time and manner which the statute hath ordained concerning sheriffs accounts, as by the statute and statutes in that behalf is limited and appointed; and likewise be dispatched from the Pipe-office with convenient expedition; and on and before the day which shall be in the year of our Lord 17 procure sufficient discharge, and formal *quietus est*, in due form of law, at the proper costs and charges of the said *J. R.* and *C. B.* or one of them, for so much of the said account as shall concern the said *C. A.* and *R. G.* as sheriff of the county of *M.* as aforesaid, their heirs, executors, or administrators, and every of them; so that their and each of their lands, tenements, goods, chattels and estates, may at all times thereafter stand free and clear from all damages, charges, and accounts,

counts, for or by reason of the said office or place of sheriff of the said county of *M.* And further, that the said *J. R.* and *C. B.* or one of them, at their, or one of their own proper costs and charges, shall defray, bear, pay, and lay out, all such charges of what nature soever, as have been heretofore laid out by any undersheriff of the said county of *M.* at the sessions held at the *Old Bailey*, within the city of *London*; and shall also, at their, or one of their proper costs and charges, defray, bear, and lay forth all charges whatsoever, which are or shall be expended at the several sessions held in the said county of *M.* at any time or times, during the said time or term, for which the said *C. A.* and *R. G.* or either of them, shall continue to be sheriff of the said county of *M.* And shall and will freely discharge and save harmless the said *C. A.* and *R. G.* and each of them, their, and each of their heirs, executors or administrators, of and from the same: And further, that the said *J. R.* and *C. B.* or one of them, shall at their, or one of their own proper costs and charges, defray, bear, pay, and lay forth all charges and other expences whatsoever, that are or ought to be laid forth or disbursed, in, for, or about the executing or punishing all and every traitors and felons, and all other persons whatsoever, that are or shall be condemned or attainted for treason, felony, and persons adjudged to be whipt, set upon the pillory, or otherwise punished according to law, whatsoever or howsoever in the said county of *M.* and of such prisoners as shall be from time to time convicted and attainted, shall and will make, or cause to be made, due execution according to the judgment or sentence against every of them to be pronounced, at any time or times during the said term or terms; And also that the said *J. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, bailiff or bailiffs, or any other officer or officers that shall be employed, retained, admitted, appointed or permitted, by, or under the said *J. R.* and *C. D.* or either of them, at any time or times during the said term or terms shall not without the special consent of the said *C. A.* and *R. G.* in that behalf in writing obtained, under their hands, detain or keep above the space of forty-eight hours, in their or any of their custody, house, room, or chamber, or in any other house, room, chamber, or place whatsoever, any prisoner, or prisoners, by him, or them, or any of them arrested, or to be arrested, or taken within the said county of *M.* for any debt, damages, fine, suit, or cause, for above the value of 20*l.* of lawful money of *Great Britain*, or for several or any cause or causes together, exceeding the said sum of 20*l.* but the same prisoners, and every of them so arrested and taken, for above the said sum of 20*l.* shall forthwith, and without delay, commit, or cause to be committed, to the gaol or prison of *Newgate*, or one other

other common gaol or prison, appointed or to be appointed for such purpose, for the said county of *M.* there to remain until such prison or prisoners shall be discharged by due course of law, or shall otherwise be let to bail, all and every such prisoner and prisoners, upon good and sufficient securities and bail, according to the form of the statute in that case made, if so be the law shall require and warrant the said sheriff, or the under-sheriff of the said county of *M.* to let to bail such prisoner or prisoners, and not otherwise; and that he the said *J. R.* with the concurrence and assistance of the said *C. B.* as aforesaid, shall and will, well, truly, and faithfully providently, circumspectly, and diligently do, perform, execute, and accomplish all and singular acts, matters, and things which to the said office of sheriff or under-sheriff of the said county of *M.* during the said term and time that they the said *C. A.* and *R. G.* shall continue in the said office, do or shall appertain and belong, or ought to be by the said sheriff or under-sheriff performed and accomplished; *And also*, that the said *J. R.* and *C. B.* and all and every the bailiffs, clerks, servants, and ministers, that shall be employed by or under them, or either of them, in the execution of the said office, to the utmost of his and their, and every of their power, and as much as in them, or any of them, is or shall be, all and singular the liberties and franchises to the said mayor, commonalty, and citizens of the city of *London*, and to the said *C. A.* and *R. G.* as sheriffs of *London*, or sheriff of the county of *M.* belonging and appertaining, shall and will well and truly observe, perform, maintain and keep, in all places within the said county of *M.* and shall not so far as in the power of the said *J. R.* and *C. B.* or either of them, shall lie, permit or suffer the said liberties and franchises, or any of them, to be broken, infringed, or violated in anywise: *And further* that they the said *J. R.* and *C. B.* or one of them, shall and will duly and justly perform, execute, and keep, all such articles and matters whatsoever, as are contained, mentioned and expressed in the condition of the bond or recognizance, which the said *C. A.* and *R. G.* or either of them with sureties, have or hath, or shall enter into and acknowledge to the use of our sovereign lord the king, in his majesty's court of Exchequer, concerning the said office of sheriff of *M.* save only such as do necessarily require the personal attendance of the said *C. A.* and *R. G.* or either of them; *And* the said *C. A.* and *R. G.* do covenant and promise and grant, by these presents, for themselves and each of them severally, and for their and each of their several heirs, executors, and administrators, to and with the said *J. R.* and *C. B.* their executors and administrators, that all and every the covenants and covenant, obligations, taken or to be taken, in the names of the said *C. A.* and *R. G.* as sheriff of the said county of *M.* either of or from

the several bailiffs in their places or of or from any person or persons arrested or to be arrested, within the county of *M.* within the time that they or either of them shall continue in the said office, by virtue of any writ, precept, or mandate whatsoever, so nevertheless, as the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, and administrators, shall be secured, kept harmless, and indemnified by the said *J. R.* and *C. B.* their heirs, executors, and administrators, for, touching, or concerning the said office of sheriff, shall be at the only use of the said *J. R.* and *C. B.* their executors and administrators, for their better security, and being saved harmless of and from any damages, losses, troubles and expences, that shall or may grow, come or happen to them, by reason of the misdemeanors or negligences of any of the said bailiffs, or any other person or persons arrested or to be arrested, or for or by reason of his or their non-appearances, or otherwise howsoever: *And* that they the said *J. R.* and *C. B.* their executors and administrators, performing the covenants herein contained on their parts to be performed shall and may at their own proper costs and charges, sue the said covenants and obligations in the name of the said *C. A.* and *R. G.* or the survivor of them, or the executors or administrators of such survivor by virtue of these presents, and receive, take, and enjoy to the proper use and behoof of the said *J. R.* and *C. B.* their executors, administrators and assigns, all such lawful benefits and recompences as shall arise or come upon or by reason of the said covenants, obligations and suits, and every or any of them, in any manner of wise as they the said *C. A.* and *R. G.* or either of them, their or either of their executors or administrators might lawfully and equitably have done, if these presents had not been made: *Provided nevertheless*, and so that the said *J. R.* and *C. B.* their executors, administrators and assigns, do always indemnify and save harmless the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, and their and each of their goods, chattels, lands, tenements, and estates, of and from all and all manner of costs, charges, damages and sums of money whatsoever, which may in anywise be awarded, adjudged, ordered, decreed, or recovered against the said *C. A.* and *R. G.* or either of them, their or either of their heirs, executors, or administrators, by reason, means, or occasion of the putting in suit as aforesaid, any of the aforesaid covenants or obligations by the said under-sheriff, his executors, administrators, or assigns, in the name or names of the said *C. A.* and *R. G.* or either of them, their or either of their executors or administrators, which they the said *J. R.* and *C. B.* do, and each of them doth hereby for himself severally, and for his respective executors and administrators covenant to do; *And*
also,

also, that it shall and may be lawful to and for the said *J. R.* with such concurrence of the said *C. B.* as aforesaid, they observing and performing the said covenants and agreements herein contained on their parts to be performed, to have and enjoy the said office of under-sheriff of the said county of *M.* subject to the proviso hereinafter mentioned, and to keep all and singular courts, tourns, leets, and county-courts, for the said time, at the times and places duly appointed for the same, according to the laws and statutes of this realm, and the customs and usages of the county of *M.* and that in such cases as aforesaid, they the said *C. A.* and *R. G.* as far as they lawfully may, without any breach or infringement of their duty as sheriff of the said county of *M.* do covenant, promise and grant, that the said *J. R.* and *C. B.* shall and may have and take all lawful fees, dues, profits, and commodities, that shall or may be lawfully had, gotten, received, or become due to the said sheriff, by virtue or means of the said office of sheriff of the said county of *M.* to the proper use of them the said *J. R.* and *C. B.* without the contradiction or denial of the said *C. A.* and *R. G.* or either of them to be given; and also that he the said *J. R.* shall and may have, receive and take to and for the proper use of the said *J. R.* and *C. B.* (in case the said *J. R.* shall be continued in the said office of under-sheriff of the said county of *M.* during the sheriffalty of the said *C. A.* and *R. G.* and shall duly pass the accounts of the said *C. A.* and *R. G.* as sheriffs of the said county, and procure a good and sufficient discharge to them in respect thereof, according to the intent of the covenants hereinbefore in that behalf contained) the sum of 119 *l.* 3 *s.* being the allowance for passing the accounts of the sheriff of the county of *M.* made or given to the sheriff of the said county of *M.* for the time being, by an act of parliament made in the third year of the reign of his late majesty king George the First, intituled *An act for the better enabling the sheriffs to sue out their patents and pass their accounts; And* the said *C. A.* and *R. G.* do hereby nominate, constitute, and appoint the said *J. R.* their lawful attorney, for them and in their names, but to the use aforesaid, to receive from the receipt of his majesty's exchequer, or from such person or persons as shall be appointed to pay the same, the said sum of 119 *l.* 3 *s.* and on receipt thereof, to make, execute, and give for them and in their names, a full and sufficient receipt and discharge for the same; they the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, and their and each of their goods, chattels, lands and tenements, being saved harmless and indemnified from time to time by the said *J. R.* and *C. B.* according to the true intent and meaning of these presents: *And whereas*, it is intended by these presents, that the said *J. R.* and *C. B.* shall receive and

account for, in the names of the said *C. A.* and *R. G.* as sheriff of *M.* such of his majesty's revenue arising within the said county of *M.* and during the continuance of him the said *J. R.* in the said office of under-sheriff, as usually hath been received by other under-sheriffs; *And also*, that the said *J. R.* and *C. B.* shall and they do hereby accordingly agree to lay out and disburse for his majesty's service, such monies as heretofore have usually been paid, laid out and disbursed by former under-sheriffs of the said county, whereby the balance of accounts between our lord the lord, and the said *C. A.* and *R. G.* (if any should be due from our said lord the king, to the said *C. A.* and *R. G.* as sheriffs of the said county) will of right belong to them the said *J. R.* and *C. B.* wherefore to enable him the said *J. R.* to receive the balance of the said account, if any shall appear to be due to the said *C. A.* and *R. G.* as sheriff of the said county, they the said *C. A.* and *R. G.* do hereby nominate, constitute and appoint him the said *J. R.* their lawful attorney for them the said *C. A.* and *R. G.* and in their names, but to the uses aforesaid, to receive at the receipt of his majesty's exchequer, from such person or persons who shall be appointed to pay the same, such surplus or balance of the said account, (if such shall be due,) and on receipt thereof to make, execute and give in the names of them the said *C. A.* and *R. G.* a full and sufficient discharge for the same. *Provided nevertheless*, and it is hereby declared and agreed by and between all the parties to these presents, and particularly by the said *J. R.* and *C. B.* for themselves, their heirs, executors and administrators, that they the said *J. R.* and *C. B.* for themselves, their heirs, executors and administrators, shall and will well and truly account for, pay, and deliver to the said *C. A.* and *R. G.* or one of them, their or one of their executors or administrators, all such sum and sums of money, fees, dues, perquisites, profits and emoluments whatsoever, which have been heretofore usually had and received by former sheriffs of the said county of *M.* and not by the under-sheriff for the time being, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said *J. R.* and *C. B.* for themselves jointly and severally, and for their respective heirs, executors, and administrators, do, and each of them doth hereby covenant, promise, grant and agree, to and with the said *C. A.* and *R. G.* their executors and administrators, that they the said *J. R.* and *C. B.* their executors and administrators, shall and will from time to time and at all times from henceforth, save, keep harmless and indemnified them the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action and actions, suits, troubles, fines, amerciaments, pains, penalties, forfeitures, defaults, and all damages,

damages, matters and things whatsoever, relating to the said office of sheriff of *M.* excepting only what shall happen by their personal default, negligence and omission of them the said *C. A.* and *R. G.* or either of them, or their or either of their proper acts. *Provided nevertheless*, that it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times, during their continuing the said *J. R.* in the said office of under-sheriff, at their or either of their wills and pleasures to command the said *J. R.* and *C. B.* or either of them, or his or their deputy or deputies, clerk or clerks, to attend them the said *C. A.* and *R. G.* or either of them, with the freeholders books, wherein the freeholders names of the county of *M.* are or shall be inserted and entered, and that the said *C. A.* and *R. G.* or either of them, at their wills and pleasures, shall from time to time nominate and return such juror and jurors, inquest and inquests, to be returned and impanelled as jurors, to inquire and serve in his majesty's courts at *Westminster*, or before any of his majesty's court or courts, commissioner or commissioners of *oyer and terminer*, gaol delivery, commission of the peace, justice or justices of the peace, and all and every other person and persons, having lawful authority to command the said *C. A.* and *R. G.* as sheriff of the said county, to cause to come before them, or any of them, any juror or jurors, inquest or inquests whatsoever to serve for or in the said county, or upon any issue whatsoever arising to be tried, or any inquisition to be taken within the said county of *M.* And the said *G. R.* and *C. B.* for themselves, their heirs, executors and administrators, *do*, and each of them *doth*, covenant and promise to and with the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, by these presents, that they the said *G. R.* and *C. B.* or one of them, shall and will from time to time, ingross, impanel, and return, or cause to be ingrossed, impanelled and returned, and summoned such juror or jurors, inquest and inquests, so from time to time nominated and appointed to be returned by the said *C. A.* and *R. G.* or either of them, with their names subscribed to such returns, and none other, together with the like process to them directed in that behalf, and shall and will always, on notice, attend with the said freeholders book on them the said *C. A.* and *R. G.* or either of them, and permit them to nominate and return such juror and jurors, inquest and inquests, in manner aforesaid; any thing in these presents contained to the contrary thereof notwithstanding. And further, that they the said *G. R.* and *C. B.* or either of them, their or either of their deputies, clerks or servants, shall not at any time or times, during the said time or term which the said *C. A.* and *R. G.* or either of them shall continue to be sheriff of the said county of *M.* ingross, return,

impanel, or cause to be ingrossed, returned or impanelled, any inquest or jury, for the trying any traitor or traitors, without the approbation of the said *C. A.* and *R. G.* first had and obtained; nor open, execute, or return any letters or commandments from the king's majesty, the privy council, or the secretaries of state, directed to the sheriff of *M.* without first giving notice to the said *C. A.* and *R. G.* and taking their directions therein, in case they or either of them, at the time of the receipt or delivery of any of the said letters or commandments, shall be resident in the city of *London*, and county of *M.* or either of them. *Provided further*, that it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times, during their continuing the said *G. R.* in the said office of under-sheriff, at their wills and pleasures to prohibit and forbid the said *G. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, by a note in writing under their hands, from opening, sending, executing, or returning any writ or writs, precept or mandate, that shall be directed to the sheriff of *M.* for the electing any member or members to serve in parliament in or for the said county of *M.* to the end, the said *C. A.* and *R. G.* or one of them, may personally and duly open, send, execute and return the same; And in such case the said *G. R.* and *C. B.* for themselves severally, and for their several heirs, executors and administrators, *do*, and each of them *doth*, hereby covenant and promise to and with the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, that they the said *G. R.* and *C. B.* will not open, send, execute or return any such writ or writs, precept or mandate, without the special directions of the said *C. A.* and *R. G.* or one of them, first had and obtained in writing, whereby to hinder or prevent the said *C. A.* and *R. G.* from opening, sending, returning or executing any such writ or writs in their proper persons: *Provided always*, and it is the true intent, meaning and agreement of all the said parties to these presents, that if the said *G. R.* and *C. B.* or either of them, shall not well, honestly and carefully demean and behave themselves in the said office of under-sheriff of the said county of *M.* in all business, matters, and things thereunto belonging, to the good liking and approbation of the said *C. A.* and *R. G.* that then and from thenceforth it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times during their or either of their continuance in the said office of sheriff of the said county of *M.* to displace and remove the said *G. R.* and *C. B.* or either of them so misbehaving, out of, and from the said place and office of under-sheriff aforesaid, for and during the then residue of the said term of the said time and term hereby granted; any thing in this present indenture contained,

tained, or any other matter whatsoever to the contrary thereof in anywise notwithstanding. And the said *J. R.* and *C. B.* for themselves severally, and for their several heirs, executors and administrators, and every of them do and each of them *doth*, covenant, promise and agree, to and with the said *C. A.* and *R. G.* their executors and administrators, by these presents, that in case of such displacing of the said *J. R.* and *C. B.* or either of them as aforesaid, they the said *G. R.* and *C. B.* or either of them, their or either of their executors and administrators, after his or their being so displaced, shall not nor will act as under-sheriff of the said county, in anywise howsoever, during the shrievalty of the said *C. A.* and *R. G.* in the case of such removal as aforesaid, they the said *G. R.* and *C. B.* or one of them, shall and will deliver unto the said *C. A.* and *R. G.* or one of them, their or one of their executors or administrators, all and all manner of books belonging or relating to the said office, and all bail-bonds, process and mandates, and other things whatsoever relating to the said office which shall then be depending or remaining, or be in the hands, custody or disposal of the said *G. R.* and *C. B.* or either of them, their or either of their clerks, bailiffs, or servants, unexecuted or not returned, whole, safe and uncanceled, and shall and will also pay and deliver to them the said *C. A.* and *R. G.* or one of them, all sum and sums of money, goods and chattels, as shall be taken, paid or levied in execution, or for the use of the king's majesty, his heirs or successors, by virtue of the said office of sheriff or under-sheriff of the said county of *M.* within two days next after request in such behalf shall be made by them the said *C. A.* and *R. G.* or either of them, their or either of their heirs, executors and administrators. And lastly, they the said *G. R.* and *C. B.* for themselves severally, and for their several and respective heirs, executors and administrators, *do*, and each of them *doth*, hereby covenant, promise and grant to and with the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, by these presents, that they the said *G. R.* and *C. B.* or one of them, shall and will bear, pay and discharge all rewards or sums of money payable, or to be paid by the said sheriff of *M.* by virtue of any act or acts of parliament already made, or which at any time or times hereafter, during the said *G. R.*'s continuance in the said office, shall be made for apprehending or convicting any person or persons, for any felony or robbery committed, or to be committed, on the king's highway, or for any burglary or felonious breaking or entering any houses, or counterfeiting, clipping or diminishing the coin of this kingdom, or for any other matter or thing,

thing, that already is or shall be hereafter, for the time and term of his continuing in the said office of under-sheriff, by any act or acts of parliament imposed on the sheriff of *M.* and indemnify the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, of and from the same.

In witness, &c.

C.

Indentures of Covenant, between the Sheriff, Bailiff and his Sureties.

THIS Indenture, made the _____ day
in the _____ year of our Lord 17 _____ Between
_____ sheriff of the county of _____
of the one part, and *A. B.* of, &c. yeoman, *C. D.* of, &c.
E. F. of, &c. and *G. H.* of, &c. of the other part, *Witnesseth*, That the said sheriff, at the special instance and request
of the said *A. B.* Hath granted, nominated and appointed, and
by these presents *Doth* grant, nominate and appoint the said
A. B. to be one of the bailiffs of the said sheriff, during all
the time that he the said *A. B.* shall continue sheriff of the
said county; And that the said bailiff shall take to his own use
all lawful fees and profits to him belonging, as one of the
bailiffs aforesaid, reserving always to the said sheriff all fees
which shall from time to time happen, grow due, or accrue,
by reason of the executing or serving any manner of execution,
capias ad satisfaciendum, fieri facias, or extent, and also all
other fees, dues, profits and emoluments to the said sheriff
incident or belonging. And the said *A. B.*, *C. D.*, *E. F.*, and
G. H. for and in consideration of the premises, for themselves
severally, their and every of their heirs, executors and ad-
ministrators, by these presents, covenant, promise and agree
to and with the said _____ his executors and administrators,
in manner and form following, *that is to say*, That he the said
A. B. from time to time, and at all times during the said
sherifalty, shall, in and by all things in his said place or office,
well, truly, lawfully and honestly bear and behave himself,
and faithfully and diligently serve and attend the said sheriff,
and his under-sheriff of the said county, and every of the
deputies of them the said sheriff or under-sheriff in the said
office, and in due and lawful manner, all their and every of
their lawful commands or directions, touching any manner of
service incident or belonging to the said sheriff of the said
county, or to any bailiff of the said county, willingly, readily,
lawfully and dutifully shall do, execute and perform:—That the
said *A. B.* shall at all time or times hereafter, during the said
sherifalty,

sherivalty, lawfully execute and serve all and all manner of briefs, warrants, precepts or mandates, directed or to be directed to him, by or in the name of the said sheriff, or by or in the name of any officer or person in that behalf lawfully authorized, which shall be tendered or come to the hands of the said *A. B.* to be executed or served; and shall and will make true, direct and lawful return and returns, and answer, in writing, subscribed with his own hand, of, to, or upon, every such brief, warrant, precept or mandate, and shall deliver the same, together with such returns, to the said sheriff or under-sheriff, at the public office of the said sheriff, on or before the days or times of the return or returns of such brief, warrant, precept or mandate, without any manner of fraud or delay, whether the same shall be demanded or not:—*That* the said *A. B.* during the said sherivalty, shall receive and take into his custody, alone, or jointly with any other bailiff or bailiffs of the said county, the body and bodies of such prisoner and prisoners, which the said sheriff, under-sheriff, or any of his or their deputy or deputies, shall, by warrant upon any writ of *habeas corpus* tender, and require the said *A. B.* to receive and take into his safe custody, and shall, by virtue of such warrant and writ of *habeas corpus*, safely conduct and carry such prisoner or prisoners to be delivered, before such court or courts, judge or judges, or to such sheriff or sheriffs, gaoler or gaolers, as the said writ of *habeas corpus* and warrant to him directed thereon shall appoint, and shall safely conduct and deliver such prisoner and prisoners before such court or judge, or into the safe custody of such sheriff or sheriffs, gaoler or gaolers, as the said writ or writs shall direct, and take the receipt of such sheriff or sheriffs, gaoler or gaolers, indorsed upon such writ or writs of *habeas corpus*, for saving harmless the said sheriff and under-sheriff in that behalf:—*That* in case any such prisoner or prisoners shall be remanded, then he the said *A. B.* shall forthwith safely convey and remit every such prisoner to the custody of the keeper of the gaol of or to the keeper or keepers of any other gaol or place of security appointed by law to receive prisoners from the said sheriff, arrested or taken in execution on any civil process:—*That* the said *A. B.* hath not heretofore suffered to go at large or to escape, nor shall hereafter, at any time or times, for and during the time that the said shall continue sheriff of the said county, set at liberty, or suffer to go at large, or to escape, any person or persons, whatsoever heretofore arrested or taken or which shall hereafter be arrested or taken, by the said *A. B.* alone, or together with or by any other bailiff or officer, by his, their, or any of their body or bodies, by virtue of any writ, warrant,

warrant, precept or mandate whatsoever of the said sheriff, or which now are, or hereafter shall be in, or committed to, the charge or custody of him the said *A. B.* alone, or together with or by any other bailiff or officer, as prisoner or prisoners of or to the said sheriff, for any cause or causes whatsoever, without a lawful and sufficient warrant for the discharging of such prisoner or prisoners:—*That* the said *A. B.* shall not at any time hereafter deliver, or suffer any goods or chattels to be taken out of his possession, which shall be seized or taken in execution by him alone, or together with any other bailiff or officer of the said sheriff, or which shall be delivered or left in the hands or custody of him the said *A. B.* by the said sheriff or under-sheriff, their deputies or clerks, without a lawful and sufficient warrant for the delivery of the same, but shall make, or cause to be made, a just, true and perfect inventory of all such goods by him so seized, or which shall come to his hands, within the space of twenty-four hours after the same shall be seized or come to his hands, as aforesaid, and shall cause the same to be appraised by two appraisers, one of them to be appointed by the said sheriff, and shall, so soon as conveniently may be after such appraisement made, deliver a copy thereof, signed by the said *A. B.* to the said under-sheriff, his deputy or clerk, or one of them, at the public office of the said sheriff; and likewise shall and will, when and so often as any goods or chattels by him so seized or taken are sold, (if the money for which such goods shall be sold shall come to the hands, custody or possession of the said *A. B.*) forthwith pay, or cause to be paid, to the said under-sheriff, his deputy or clerk, or some or one of them, all such sum and sums of money for which the same shall be sold:—*That* the said *A. B.* shall not remove any goods or chattels which at any time or times, during the continuance of the said sheriffalty, he may seize or take in execution, within the said county, from the place where such goods and chattels shall be so seized or taken in execution, before the rent (if any due) shall be paid to the landlord or landlords of the premises whereon any such goods or chattels shall have been seized or taken in execution, pursuant to the statute in that case made and provided:—*That* the said bailiff, from time to time, and at all times during the said sheriffalty, shall truly and diligently levy, collect and gather all and every the several sum and sums of money wherewith the said sheriff shall stand charged or chargeable in his majesty's court of Exchequer at *Westminster*, or any other court whatsoever, to be levied, collected and gathered, within the said county, and for levying whereof, the said bailiff shall have a sufficient warrant delivered or tendered to him:—*That* the said bailiff shall well and truly satisfy and pay all and every the same sum and sums of money to the said sheriff, or to the said under-sheriff, their or one of their executors or administrators, at
or

or before the return of such warrant, which for levying the same shall be delivered or tendered to the said bailiff as aforesaid, so as the said sheriff may make payment of the said money into the said court of Exchequer in due time, and may pay his perfect account at the time limited by the said court, and that the said bailiff shall, upon request, subscribe his name, testifying the receipt of every such warrant:—*That* the said bailiff shall, during the said sheriffalty, seize and take into his hands and custody all goods and chattels of felons, fugitives, and persons outlawed or waived, or goods or chattels waived or strayed, which shall happen to be found, had or taken, within the said county; and thereof, and of all other sums of money, fees and profits, in anywise due, belonging or incident to the said sheriff or under-sheriff, which shall at any time happen to come to the hands or custody of the said *A. B.* by reason of executing the said place or office of one of the bailiffs of the said sheriff, shall make a just and true account, and payment or delivery, to the said sheriff or under-sheriff, when and so often as the said *A. B.* shall be thereunto required:—*That* the said bailiff, during the said sheriffalty, shall diligently and carefully, in his own person, in due manner, attend at all and every general and quarter session or sessions of the peace at and sessions of oyer and terminer, and gaol delivery, to be holden for the said county, at or at any place or places within the said county, or elsewhere, and during the continuance of every such session and sessions, and of every adjournment or adjournments thereof, and there do, perform, and accomplish all such things as to the said office of bailiff shall appertain:—*That* the said during the said sheriffalty, so often as he shall arrest, or take in execution, any person or persons, by virtue of any warrant whatever, before the person or persons so arrested or taken, be carried to any public or other house, or before any liquor or meat shall be called for, he the said bailiff shall shew and deliver to the person or persons so arrested, or taken in execution, copies of the following clauses, part of an act of parliament passed in the 22d year of the reign of his late majesty king George the Second, intituled *An act for the relief of debtors with respect to the imprisonment of their persons, and to oblige debtors who shall continue in execution beyond a certain time, and for sums not exceeding what are mentioned in the act, to make discovery of, and deliver upon oath their estates, for their creditors benefit; and also that the said A. B. shall suffer the person so arrested, or any friend of his, to read the same; which said clauses follow in these words:*

BE IT THEREFORE ENACTED by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that no sheriff, under-sheriff, bailiff, serjeant at mace,

mace, or other officer or minister whatsoever, shall at any time or times hereafter, convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or being in his or their custody by virtue or colour of any action, writ, process, or attachment, to any tavern, alehouse, or other public, victualling, or drinking house, or to the private house of any such officer or minister, or of any tenant or relation of his, without the free and voluntary consent of the person or persons so arrested or in custody; nor charge any such person or persons with any sum of money, for any wine, beer, ale, victuals, tobacco, or any other liquor or things whatsoever, save what he, she, or they, shall call for, of his her or their own free accord; nor shall cause or procure him, her, or them, to call or pay for any such liquor or things, except what he, she, or they, shall particularly and freely ask for; nor shall demand, take, or receive, or cause to be demanded, taken, or received, directly or indirectly, any other or greater sum or sums of money, than is or shall be by law allowed to be taken or demanded, for any arrest or taking, or for detaining or waiting till the person or persons so arrested or in custody shall have given an appearance or bail, as the case shall require, or agreed with the person or persons, at whose suit, or prosecution, he, she, or they, shall be taken or arrested, until he, she, or they, shall be sent to the proper gaol belonging to the county, riding, division, city, town, or place, where such arrest or taking shall be; nor shall exact or take any reward, gratuity, or money, for keeping the person or persons so arrested, or in custody, out of gaol or prison; nor shall carry any such person or persons to any gaol or prison, within four-and-twenty hours, from the time of such arrest, unless such person or persons, so arrested, shall refuse to be carried to some safe and convenient dwelling-house, of his, her, or their own nomination, or appointment, within a city, borough, corporation, or market-town, in case such person or persons shall be there arrested, or within three miles from the place where such arrest shall be made, if the same shall be made out of any city, borough, corporation, or market-town, so as such dwelling-house be not the house of the person arrested, and be within the county, riding, division, or liberty, in which the person under arrest was arrested; and then and in such case, it shall and may be lawful to and for such sheriff, or other officer or minister, to convey or carry the person or persons so arrested, and refusing to be carried to such safe and convenient dwelling-house as aforesaid, to such gaol or prison as he, she, or they, may be sent to, by virtue of the action, writ, or process, against him, her, or them. And be it further enacted by the authority aforesaid, that no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer, or person, shall, at any time or times hereafter, take or receive any other or greater sum or sums, for one or more nights lodging, or for a day's diet, or other expences of any person or persons under arrest, or any writ, action, attachment, or process, other than what shall be allowed, as

reasonable in such cases, by some order or orders already made, or which shall hereafter be made, by the justices of the peace, at some general or quarter sessions, which shall be held for the county, riding, division, city, town, or place, where such arrest or taking shall be, who are hereby authorized and required, with all convenient expedition, to make such standing order or orders for ascertaining such charges and expences, within their respective counties, ridings, divisions, cities, towns, and jurisdictions, if the same hath or have not already been there made, and if any such order or orders hath or have been there already made, such justices for the time being, at their respective general or quarter sessions, are hereby authorized and required to vary or alter the same, from time to time, as there shall be occasion; and also are hereby required to cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace of every such county, riding, division, city, town, or place, respectively to be put and kept up in some conspicuous place in the sessions-house, or some other proper place, of every such respective county, riding, division, city, town, or place, as such justices shall order, so as the same may be there seen and examined, as occasion may require. That the said *A. B.* during the said shierivalty, shall immediately after any arrest by him made, by virtue of a warrant to him directed, by or in the name of the said shieriff, give notice of the same to the said under-shieriff, or to one of his clerks or deputies, at the public office of the said shieriff, and duly enter the name of the person or persons by him so arrested, or taken in execution, and shall safely deliver into the prison, in the charge or custody of the gaoler, or keeper of the gaol of or to the keeper or keepers of any gaol, or place of security, appointed by law to receive prisoners from the said shieriff, arrested or taken in execution, by any civil process, within the space of twenty-four hours next after such arrest or taking, (except in the mean time he, she, or they, shall be lawfully discharged,) there to be safely kept until they shall be from thence duly discharged. And if it shall so happen, that the said *A. B.* shall keep or detain any person or persons, by him so taken in execution, in his own house, or elsewhere, and shall not deliver him, her, or them, into the gaol of or to the keeper or keepers of any other gaol or place of security as aforesaid, within twenty-four hours next after such arrest or taking, that then, and in every such case, he the said bailiff shall well and truly pay, or cause to be paid, to the said shieriff, or under-shieriff, the sum of ten pounds, of lawful money of Great Britain, for every hour that he the said *A. B.* shall keep or detain in his custody, out of the said gaol of or other place of security, any person or persons, by him so arrested or taken, beyond and above the before limited time of twenty-four hours, except the said bailiff shall have licence in writing, under the hand and seal of the said shieriff,

sheriff, or under-sheriff, for the keeping and detaining in his custody any such prisoner or prisoners for a longer time:—*That* if any return or returns shall at any time or times be made, at the particular instance or desire of the said *A. B.* by or in the name of the said sheriff, to any writs, bills, or precepts, which shall or may at any time be declared or adjudged insufficient by any of his majesty's courts at *Westminster*, then, and in every such case, the said bailiff shall and will bear, satisfy, and pay to the said sheriff, or under-sheriff, all loss, costs, charges, damages, expences and amerciaments, which the said sheriff, or under-sheriff, shall in any manner suffer, sustain, pay, or to be put unto, for or by reason of the making any such insufficient return or returns:—*That* if any writ or writs of attachment of contempt hath or have issued, or shall hereafter be sued out and prosecuted against the said sheriff, for or by reason of the not bringing into court the body or bodies of any person or persons arrested or taken by the said *A. B.* of or for whom he hath, or shall take any bail-bond to the said sheriff, or of or for whom the said bailiff ought to have taken any such bond, then, and in every such case, the said *A. B.* &c. shall, and will, well and faithfully bear, pay and discharge, to the said sheriff, or to the said under-sheriff, all losses, costs, charges, damages, and expences, which they, or any of them, shall or may suffer, sustain, pay, or be put unto, for or by reason of any such writ or writs of attachment, or for or by reason of any person or persons, forbearing to execute, or further prosecute the same:—*That* if any copy or copies of any warrant or warrants shall be delivered, sent or certified to the said *A. B.* from the said sheriff, under-sheriff, deputy or clerk, as a copy or copies of any other warrant or warrants, or detainer or detainers, against any person or persons arrested or taken by the said bailiff, or delivered to him, or left at his house, or place of abode, for safe custody, by any other bailiff or bailiffs of the said sheriff, then, and in every such case, the said *A. B.* shall and will, if such copy or copies shall happen to be against the person or persons arrested, or then in his custody, as bailiff aforesaid, safely keep him, her, or them, by virtue of such detainer or detainers, until he, she, or they, shall be discharged by due course of law; and upon every bailable writ or process, which shall appear from any such copy or copies, the said *A. B.* shall and will take a good and sufficient bail-bond, if the same shall be tendered:—*That* the said *A. B.* shall and will, whenever he shall receive any copy or copies as aforesaid, give notice to the bailiff or bailiffs, who shall have the custody of the original warrant or warrants, or to whom the same is or shall be directed, to the intent that every such original warrant may be immediately returned to the said under-sheriff, deputy or clerk, at the public office of the said sheriff.—*That* if any copy or copies of any warrant

rant or warrants, which shall or may be sent, delivered or certified to the said *A. B.* as aforesaid, shall not happen to be against the person or persons by him arrested, or then in his custody, the said *A. B.* shall immediately return every such copy, and give notice in writing thereof, to the said under-sheriff, deputies or clerks, at the public-office of the said sheriff.—*Provided always,* that the said bailiff shall, immediately on the receipt of any warrant to him directed from the said sheriff, under-sheriff, or any other person or persons by them, or either of them, duly authorized, and signed by or in the name of the said sheriff, to discharge any prisoner or prisoners, or quit possession of any goods or chattels seized as aforesaid, discharge any such prisoner or prisoners, and quit possession of such goods and chattels.—*That* the said *A. B.* shall not, during the said sheriffalty, seize, or take in execution, the goods of, or attach, or arrest the body of, any ambassador or foreign minister, or the servant of any ambassador or foreign minister, or of any other person whatsoever, privileged or protected, without licence in that behalf first had and obtained, under the hand-writing of such person or persons, who for the time being have good authority to grant licence in that behalf.—*That* the said *A. B.* shall and will take good and sufficient bail-bonds, or bonds of appearance, (if the same shall be tendered,) of all persons by him arrested or taken on bailable process, whereon he shall execute or serve any warrant or warrants, to him directed, by or in the name of the said sheriff, according to the form of the statute in such case made and provided; and that the said bailiff, before he shall let to bail any person so arrested, or taken, shall procure a certificate in writing, under the hand of the said under-sheriff, his deputy, or clerk, purporting that there are not any other writ or process, then in the sheriff's office, against the person so arrested or taken.—*That* the said *A. B.* shall and will deliver to the said under-sheriff, deputies, or clerks, all bonds, bailable or otherwise, which he shall take to the said sheriff, within two days after the same shall be taken; and if the said *A. B.* shall neglect or refuse so to do, then, for every such refusal or omission, he shall and will forfeit and pay to the said under-sheriff, deputies, or clerks, ten shillings of like lawful money.—*That* the said *A. B.* during the said sheriffalty, shall execute to the said sheriff, a sufficient bail-bond to all writs, process, and precepts, which shall be delivered to the said sheriff against him; and shall appear thereto, and put in such bail as the same shall require, or render his body to the said sheriff, to the intent that he may be duly committed; and farther shall do and perform all such things as the law in that behalf shall require:—*And* also shall satisfy and pay unto the said sheriff, or to the said under-sheriff, all such sum and sums of money, for which any writ of execution shall be delivered to the said sheriff, against him the said *A. B.* or otherwise shall render himself a prisoner

soner to the aforesaid sheriff thereupon.—*That* the said bailiff shall pay to the said sheriff, or under-sheriff, all loss or any sum or sums of money which they or either of them shall suffer, or pay, for or by reason, or means of any writ or process delivered to the said sheriff against him.—*That* if any debt, damage, sum or sums of money whatsoever, shall at any time or times hereafter be recovered, adjudged, or decreed, against the said sheriff, for the escape, or suffering to go at large, any prisoner or prisoners whatsoever, or for taking insufficient bail of prisoners, bailable by law, or refusing, or neglecting to take sufficient bail, or for taking bail of such prisoners as by law are not bailable, or by mistake in levying one person's goods for another, or for any other cause, where it shall appear that such escape or suffering to go at large, taking such goods, or other cause, was or were occasioned, made, done, committed, or suffered by the default, negligence, permission, or occasion of the said *A. B.* or any of his servants, or others by him entrusted or employed.—*That* in every such case, the said *A. B.*, *C. D.*, *E. F.*, &c. or some of them, their or some of their executors or administrators, shall well and truly satisfy and pay unto every such person or persons, who shall so recover against the said sheriff, or unto whom any thing shall be recovered, adjudged, ordered or decreed, all and every the same debts, damages, sum and sums of money, goods, or things so recovered, adjudged, ordered or decreed, without any further suit or delay, and shall thereof clearly exonerate, acquit and discharge the said sheriff, and shall likewise satisfy and pay unto the said sheriff, or to the said under-sheriff, all such sum and sums of money as the said sheriff, or under-sheriff, or any of them, shall have disbursed, or expended, in defending any such suit, over and above the usual costs, in any court or courts, against the said sheriff, in that behalf adjudged.—*That* the said bailiff, on the _____ day of _____ now next coming, shall deliver to the said sheriff, under-sheriff, deputies, or clerks at the public-office of the said sheriff, all warrants which may be hereafter granted, by or in the name of the said sheriff, on any writ or process, returnable in the then next term, which shall remain in his hands not executed, to the end that the said sheriff may turn over to the succeeding sheriff, by indenture, all such writs and process as shall remain in his hands unexecuted, pursuant to the statute in that case made and provided. *Provided nevertheless*, and it is covenanted, concluded and agreed upon, by and between the said parties to these presents, that when and so often as the said bailiff shall make breach of any of the covenants, articles, and agreements, which, by or on the behalf of him, are or ought to be observed, performed, fulfilled and kept, that then, and from thenceforth, it shall and may be lawful for the said sheriff, or the said under-sheriff, deputies, or clerks, to remove and put out the said bailiff, from his said office, or employment:—*And* in case of such

such removal, that he shall deliver, or cause to be delivered unto the said sheriff, under-sheriff, deputies, or clerks, all such warrant or warrants, precept or precepts, bond or bonds, writing or writings, whatsoever, which may or shall in anywise appertain or belong to the said sheriff, and also shall pay to the said sheriff, or under-sheriff, all and every sum and sums of money by him levied, received, or collected, by virtue of any such warrant, precept, or mandate of the said sheriff, and then remaining in his hands, the said sheriff, under-sheriff, deputies, or clerks, giving unto the said bailiff, a receipt or acquittance for the same. — *That* the said *A. B.* shall and will, during the said sheriffalty, before he shall execute or serve, or permit to be executed or served, any warrant, or mandate, in replevin to him directed, by or in the name of the said sheriff, take good and sufficient pledges and bonds in replevin, and shall and will deliver all such bonds, immediately after the execution thereof, to the said under-sheriff, deputies or clerks, at the public-office of the said sheriff, fair and uncanceled. — *That* the said *A. B.* shall and will well and faithfully bear, pay and discharge, to the said sheriff, or under-sheriff, all loss, costs, charges, damages, and expences, which hath, have, or shall at any time or times hereafter, be recovered, adjudged, ordered or decreed against them, or any of them, in any court of law, or equity, for or by reason of any insufficient pledges in replevin, taken by the said bailiff, to the said sheriff, or for or by reason of not taking good and sufficient pledges and bonds, upon any plaint or writ wherein the said *A. B.* hath, or shall execute or serve any replevin warrant to him directed, by or in the name of the said sheriff. — *And lastly*, the said *A. B.*, *C. D.*, *E. F.*, and *G. H.*, for themselves severally, and for their and every of their heirs, executors, and administrators, farther covenant, promise and agree, to and with the said sheriff, his executors, and administrators, that they the said *A. B.*, &c. and every of them, shall and will for ever clearly acquit, exonerate, defend, save harmless, and keep indemnified, the said sheriff, his executors, and administrators, of, from, and against all loss, costs, charges, damages, and expences, which he can, shall or may in any manner suffer, sustain, bear, pay, or be put unto, as well for or by reason or means of the breach or non-performance of any of the articles, covenants, clauses, and agreements hereinbefore contained, as for or by reason of any act, matter or things made, done, or committed, or wittingly or willingly suffered to be made, done, or committed, by the said *A. B.* to the prejudice or injury of the said sheriff, or under-sheriff, or for or by reason of the not performing, duly executing, and accomplishing all such matters and things incident or belonging to the said office of bailiff, which he ought to do, or cause to be done in the premises. *In witness, &c.*

*Appointment of Sheriffs of London and Middlesex, to the
Keeper of the Gaol of Newgate.*

THIS indenture, made the _____ day of _____ in the 40th year of the reign of our sovereign lord George, &c. and in the year of our Lord 1799. Between _____ of the city of London, alderman and goldsmith, and _____ of the city of London, Esquire, citizen and haberdasher, of the one part, and John Kirby, of the Old Bailey, London, gentleman, of the other part, Witnesseth, that the said _____ and _____ being elected and chosen, and having taken upon them the office of sheriffs of the city of London, and also the office of sheriff of the county of Middlesex, for one whole year, commencing from the day of the date hereof, as well in consideration of the assured hope and trust that they the said _____ and _____ have of the fidelity and honest dealing of the said John Kirby, and of the confidence they repose in him, as for and in consideration of the covenants and agreements hereinafter contained, on the part and behalf of the said John Kirby, his heirs, executors, and administrators, to be kept and performed, as also for divers other good causes and considerations, them the said _____ and _____ thereunto moving, have and each of them hath (as much as in them lie, and they lawfully may) deputed, ordained, constituted, authorized, and appointed, and by these presents do, and each of them doth, depute, ordain, constitute, authorize, and appoint, the said John Kirby to be their gaoler or keeper, for and under them the said _____ and _____ of all and every such prisoner or prisoners, as now is, or are, in the custody or keeping of them the said _____ and _____ or any of their deputy or deputies, servants, or assigns in the gaol or prison of Newgate, who shall at any time or times hereafter, during the sheriualty of them the said _____ and _____ be sent, brought or committed prisoners to the said gaol or prison of Newgate, or delivered or committed into the custody or keeping of them the said _____ and _____ or either of them, as sheriffs of London, or sheriff of Middlesex, by virtue or means of any writ or writs, process or processes, warrant or warrants, mandate or mandates, or otherwise on any pretence whatsoever, by any person or persons, having lawful authority in that behalf:—But subject nevertheless to the proviso, or power of displacing or removing the said John Kirby, from the said office of gaoler or keeper of Newgate, at the will and pleasure of the said _____ and _____ or either of them, And they the said _____ and _____ have, and each of them hath, constituted and appointed, and by these presents do, and each of them doth, constitute and appoint the said John Kirby, for them, and

and in their names, or in the name of him the said *John Kirby*, and to and for the proper use of him the said *John Kirby*, to demand, take, and receive, all such just and lawful profits, benefits, commodities, advantages, fees, and perquisites, as shall and may be lawfully had, made, gotten, received, or become due, or as are, or shall be during the said sherivalty of the said and incident, belonging, or appertaining to the said place or office of gaoler or keeper of *Newgate*, arising therefrom, or by reason thereof in anywise howsoever, as a recompence to the said *John Kirby*, for his trouble, risk, and care in the execution of the said office of gaoler or keeper of *Newgate*, and undertaking at his own proper costs and charges, from time to time, during the sherivalty of the said and or either of them, and his the said *John Kirby* being continued the gaoler or keeper of the said gaol of *Newgate*, by the said and or either of them, to find, provide, and be at the expence of all necessary goods, utensils, and furniture, for the use of the said gaol or prison of *Newgate*, and also all requisite and necessary iron fetters, locks, bolts, manacles, handcuffs, and other cuffs, ropes, and other things, usually found and provided by any gaoler or keeper, in or about the said prison, for the safe custody of the prisoners committed, or to be committed, during the said sherivalty of the said and thereto, according to his the said *John Kirby's* covenant, hereinafter for that purpose mentioned;—And also, in consideration of the said and their heirs, executors, and administrators, shall be freed and discharged by the said *John Kirby*, his heirs, executors, and administrators, from time to time, during his continuance in the said office of gaoler or keeper of *Newgate*, under the said and or either of them, from all charges, and damages whatsoever, relating to the said office of gaoler, as herein is mentioned.—That they the said and do severally covenant, promise, and grant by these presents, and each of them, their, and each, and every of their executors, and administrators, to and with the said *John Kirby*, his executors and administrators, that they the said and shall and will allow unto the said *John Kirby*, to and for his own use, all the just and lawful profits, benefits, commodities, advantages, fees, and perquisites, as shall be received by the said *John Kirby*, by virtue of his said office, during so long time as he shall be continued therein, under them the said and or either of them;—And, in consideration of the premises, and for other good causes and considerations, him, the said *John Kirby*, thereunto moving, he, the said *John Kirby*, for himself, his executors and administrators, and for every of them, doth covenant, promise, and grant, to and with the said and their executors and administrators, by these presents, that

that he, the said *John Kirby*, shall well, truly, duly, honestly, and sufficiently, (during so long as the said and

or either of them shall continue in the said office of sheriffs of *London*, or sheriff of *Middlesex*, and shall think fit to continue the said *John Kirby* in the office of gaoler or keeper of *Newgate*;) honestly execute and perform the same, and carefully, well, truly and demean and behave himself therein, and in all matters and things whatsoever thereto relating, without committing any extortion, or accepting any unlawful bribes, fees or rewards, either by himself his agent or agents, deputy or deputies, servant or servants, or any otherwise,—*In trust* for him or for his use:—*And also* that he the said *John Kirby*, or his deputy or deputies, agent or agents, shall also from time to time, and at all times from henceforth, during his the said *John Kirby's* being continued in the said office of gaoler by the said and stand

and be charged with all and every the prisoner and prisoners as is and are now remaining and being in, or belonging to the said gaol of *Newgate*:—*And likewise* that the said *John Kirby*, or his agent, shall also from time to time, and at all times from henceforth, during the said *John Kirby's* being continued in the said office, by the said and receive and take into his custody, and for safe keeping in the said gaol, all and every prisoner and prisoners who shall be from time to time hereafter (during so long time as they the said and shall continue sheriffs of or for the said city of *London*, and sheriff

of the county of *Middlesex*, and continue the said *John Kirby* in the said office) brought, committed, or sent to the said gaol, or the custody of the said and or either of them, by virtue of any writ or writs, process or processes, mandate or mandates, warrant or warrants, by any person or persons whatsoever having a lawful authority or power for that purpose;—*And* the said prisoner or prisoners as shall be so brought committed, or sent as aforesaid, all the prisoner and prisoners now being and remaining in the said gaol of *Newgate*, shall and will well and truly, by himself, his deputy or deputies, keep safe and imprisoned, according to the tenor, purport, and effect of the warrants, precepts, or commandments, writs or authority by virtue of which he, she, or they or any of them shall be or stand committed, charged, or imprisoned, until such prisoner or prisoners shall be delivered by due course of law, or set free and at liberty with the allowance of the said

and or their under-sheriff, or delivered over to the next succeeding sheriffs or sheriff upon the expiration of the sheriffalty of the said and *And also* that the said *John Kirby*, his deputy or deputies, agent or agents, servant or servants shall not, nor will permit or suffer any prisoner or

or prisoners whomsoever to be delivered out of the said gaol or prison, unless by due course of law, without a liberate or some other sufficient warrant from the said and
 or their under-sheriff, deputy or deputies under seal of the office first had and obtained.—*And further* that he the said *John Kirby*, his heirs, executors or administrators, shall and will, at all times hereafter, acquit and discharge, or otherwise well and sufficiently save, keep harmless, and indemnify the said and
 and each of them, their and each of their heirs, executors, and administrators, and their and each of their goods and chattels, lands, tenements and estate, of, from and against all, and all manner of action and actions, cause and causes of action, suits, payments, damages, expences, fines, amerciaments, pains, sum and sums of money, penalties, contempts, forfeitures, judgments, executions, damages, costs and losses, and of and from all and every other troubles, charges and incumbrances whatsoever, that shall or may happen, arise or grow, or be put unto, or assessed, imposed, laid, rated, set, or taxed upon, or brought against them the said and
 or either of them, their or either of their heirs, executors, or administrators, or their or either of their goods, chattels, lands, or tenements, for or by reason of any escape or escapes, or letting any prisoner or prisoners, voluntarily or negligently, or otherwise, to go at large or escape, or for or by reason of any act, default, negligence, misbehaviour, misfeazance or misfeazances, abuses, misdemeanors, commission or commissions, omission or omissions, default, delay, or contempt, or for or by reason of any matter, cause or thing that should or ought at any time, in any kind whatsoever, to be done or performed by the said *John Kirby*, as gaoler or keeper of the said prison of *Newgate*, or by any of his deputy or deputies, clerk or clerks, agent or agents, officers, or ministers, servant or servants, or for or by reason of his or their not doing, insufficient doing, over doing, or neglecting his or their duty or duties, or returning, misreturning, or the not due returning, or executing any writ or writs, warrant or warrants, precept or precepts, mandate or mandates, or for or in respect of any matter or cause, or thing whatsoever hereafter to be done, or omitted to be done by him, them, or either of them, concerning the said office of gaoler or keeper of *Newgate*, or for or in respect of any demands or duties due or payable, by the gaoler of the said gaol, to the judges or clerks of the assize, or clerk of the peace, judges' servants, or other officers or persons whatsoever, or for or by reason of the non-attendance of the said *John Kirby*, as gaoler or keeper of the said gaol, in any of the courts of judicature, or before any of the judges, justices of the peace, and officers having a legal authority to require his attendance, or for or by reason of the non-observance

or non-obeyance of the commands of the several courts of our sovereign lord the king, his heirs, and successors, before the said
 and as sheriffs of *London*, and sheriff of *Middlesex*, held or to be held; or the not duly executing the said office of keeper of the said gaol of *Newgate*, or any ways relating thereunto, or for or by reason of any matter, or thing whatsoever in anywise concerning the said office of gaoler of *Newgate*, or the execution thereof, and that without any trouble, costs, charges, damages, or expences therefore to be sustained, incurred, or expended by the said and or either of them, their or either of their heirs, executors, or administrators, in, about, for, touching, or concerning the same: *And further* that he the said *John Kirby* shall and will from time to time, and at all times from henceforth, during all the time that he shall continue in the said office of gaoler, under the said and make and keep a just, exact, true, and perfect account or calendar in writing, containing as well all and every the name and names of all and every the prisoner and prisoners who now is and are, from time to time, from henceforth hereafter during the sheriffalty of the said and his the said *John Kirby's* continuance in the said office under them, shall be committed prisoner or prisoners to the said gaol of *Newgate*, as also of all and every the several cause and causes of the commitments and imprisonments of all and every such person and persons, and the time when committed, and by whom: *And likewise* that the said *John Kirby*, his agent or agents, shall and will from time to time, and all times during the sheriffalty of the said and deliver unto them the said and and to all and every such person and persons as the said and or either of them, shall from time to time direct, and when and where, and as often from time to time as thereunto required, true and fair copies in writing of any such calendar and calendars: *And also* that the said *John Kirby* shall and will from time to time, and at all times from henceforth, during his continuance in the said office, be truly diligent, attending, assisting, and aiding unto the said and and their secondaries, under-sheriff or under-sheriffs, in all affairs and business whatsoever, wherewith the said and is, are, or shall be charged or employed, in or about the keeping of the said gaol or prison of *Newgate*: *And also* that he the said *John Kirby* shall and will freely remove, carry, and convey all manner of prisoner and prisoners, as well at the time of the sessions of oyer and terminer, and gaol delivery for the said city of *London* and county of *Middlesex*, as also at all other times; and to such place or places, and to and before such court and courts, person and persons, and at and by such

such time and times as the said _____ and _____ or their under-sheriff or under-sheriffs, shall be charged or required, by any legal process or authority, to convey, carry, and remove such prisoner or prisoners; and lay out and expend all monies, whatsoever, as shall be occasioned thereby; and the same prisoner and prisoners shall, from time to time, during the term aforesaid, safely remove and carry back again to the said gaol of *Newgate*, unless he, she, or they shall be removed or delivered out of the custody of the said _____ and _____ by due course of law (all such allowance and allowances as shall be made, given, allowed, or paid by and from the Exchequer or elsewhere, that hath or have been usually paid by the secondaries of the *Poultry* and *Wood-Street* compters, *London*, to the under-sheriff of *Middlesex*, or any or either of them, for the removing, carrying or re-carrying such prisoner or prisoners, being permitted to be had and taken by the said *John Kirby* for his own use). *And likewise* that he, the said *John Kirby*, shall and will, at his own proper costs and charges, find and provide, during the time he shall so continue in his said office, under the said _____ and _____

as well as such bedding, furniture and other things, for the use of the said gaol of *Newgate*, as shall be requisite and necessary for the said _____ and _____ to find and provide, or cause to be found and provided, or as they are by law, custom, or usage obliged to find and provide for the same, and also all and every such irons, links, locks, keys, bolts, manacles, handcuffs, and other cuffs, and all kinds of fetters, and other utensils and things as shall be necessary to be used or as there shall be occasion to be made use of in and about the said gaol, for the benefit, security, and confinement of the person and persons who now are or shall be, during the sheriffalty of the said _____ and _____

and his the said *John Kirby* being continued keeper of the said gaol of *Newgate*, by the said _____ and _____

, committed prisoners to the said gaol, to prevent their making any escapes. *Provided always*, and it is hereby declared and agreed by and between the said parties hereto, that it is the true intent, and meaning, and agreement of them, and of these presents, that it shall and may be lawful to and for the said _____ and _____ or either of them, at any time or times during their and either of their continuance in the said offices or office, at their, any, or either of their free will and pleasure, and without giving or shewing, or being compellable to give or shew to him the said *John Kirby*, or to any other person or persons whatsoever, or to any court or courts at law or other judicature whatsoever any cause or reason for their or either of their so doing, absolutely to displace, or remove the said *John Kirby* out of the said place or office of keeper or gaoler of the said gaol of _____ *Newgate*

Newgate aforesaid, for and during all the residue of the said term as shall be then to come of their sherrivalty, any thing in these present indentures contained, or any other matter whatsoever to the contrary thereof in anywise notwithstanding. And the said *John Kirby*, for himself, his heirs, executors, and administrators, and every of them, doth further covenant, promise, and agree to and with the said and their executors and administrators, by these presents, that in case of such displacing or removing of him the said *John Kirby* as aforesaid, he the said *John Kirby*, after his being so displaced or removed, shall not, nor will act as gaoler of the said gaol of *Newgate* in anywise howsoever, during the sherrivalty of the said and

And also that the said *John Kirby*, his executors or administrators, in case of such removal of him the said *John Kirby* out of and from the said office, shall and will, within the space of three days then next ensuing, deliver over, or cause to be delivered over unto the said and

or one of them, their or one of their executors, administrators, or assigns, or such person or persons as they, or either of them, shall depute, the possession of the said gaol, and all the prisoners therein, and all, and all manner of books, papers, and other things whatsoever, relating, or that have related, to the said office since the said *John Kirby* shall have acted therein, by virtue of these presents, whole, safe, and in good order, and without alteration, razures, or obliterations to be made therein after such the determination of the will of the said and or either of them as to the said office of gaoler, pursuant to the said power thereby reserved. In witness, &c.

Bond for executing Gaolership.

Obligation from R. A. to C. A. and R. G. Penalty 2000 l.

THE condition, &c. That if the above bounden *J. K.* gaoler to the said *C. A.* and *R. G.* sherriff of the county of *M.* do from time to time receive and take into his ward and custody within the gaol in the county of *M.* aforesaid, all such person and persons, prisoner and prisoners, which shall be committed or sent to the said gaol, or any committed to the ward and custody of the said gaoler by the said sherriff or his deputy, or by any justice or justices of the peace, or by any other having lawful authority to commit persons or prisoners to the said gaol, and the said persons and prisoners, so committed as aforesaid, do well and truly, duly and sufficiently, by his own proper person, or by his sufficient deputy or deputies, so keep, that the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, lands, tenements, goods and chattels be saved harmless from all losses, penalties, amerciaments and damages whatsoever, as well against our lord the king, as also against all other

other person and persons of, for and concerning the custody and keeping of the said gaol, and prisoners; and likewise do discharge, save, and keep harmless the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, lands, tenements, goods and chattels, from time to time, and at all times hereafter, as well of convict persons, reprieves and felons, as of all other persons now committed for any contempts, condemnations, trespasses or misdemeanors, which may happen or chance hereafter to be committed to the said gaol for any of the causes aforesaid, during the time the said *C. A.* and *R. G.* or either of them shall be sheriff of the county of *M.* and likewise the said *J. K.* or any other by his consent, privy or appointment, in anywise let to bail or mainprize any prisoner or prisoners to him committed as aforesaid, not bailable by the law of the nation, without the special commandment or appointment of the said sheriff; and if the said *J. K.* or his sufficient deputy be ready to give his attendance upon the said sheriff and his deputy at all times necessary and convenient, and all and every thing and things that he shall be required to do by the said sheriff or his deputy, touching or concerning the affairs or business wherewith the said sheriff is or shall be charged or employed in or about the keeping of the said gaol or prison: *That* then this obligation to be void, otherwise to be in full force and effect.

Deputation to take an Inquisition.

Oxon, *G. K.* esquire, sheriff of the county aforesaid, to *C. K.* gentleman, greeting: By virtue of a writ of enquiry issued out of his majesty's court of *King's Bench at Westminster*, to me directed, and hereunto annexed, I do hereby authorise and empower you to summon a jury, and take an inquisition in my name, in a cause wherein *G. H.* is plaintiff, and *J. K.* is the defendant, and render me an account of what you shall do therein: so that I may certify the same to our sovereign lord the king at *Westminster*, on next after Hereof fail not. Given under the seal of my office, the day of 1786

This deputation to be indorsed and returned with the inquisition. } By the same sheriff.

Deputations to grant Replevins.

Oxfordshire, *A. B.* esquire, sheriff of the county aforesaid, to wit. *A. C.* gentleman: I do hereby appoint you one of my deputies for making or granting replevins within the said county, pursuant to the statute in that case made and provided; and for your so doing, this shall be your sufficient authority. Given under the seal of my office, the day of 1786.

By the same sheriff.
Assignment

Assignment of a Lease.

TO all to whom these presents shall come: I *W. A.* esquire, sheriff of the county of _____ send greeting: Whereas by virtue of his majesty's writ of *feri facias* unto me directed, commanding me that I should cause to be made of the goods and chattels in my bailiwick of *T. M.* as well a certain debt of 2000*l.* which *J. T.* esq, had recovered against him in his majesty's court before the king himself at *Westminster*, as also 63*s.* which in his majesty's same court were awarded to the said *J.* as well for his damages which he sustained by reason of the detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, and that I should have that money before the king at *Westminster*, on next after _____ to render to the said *J.* for the debt and damages aforesaid, whereof the said *T.* was convicted; and whereas by virtue of the said writ, I, the said sheriff, took the within written indenture of lease in execution, and on the _____ day of _____ last past, sold the same by public auction, to *S. R.* of, &c. mercer, (being the best bidder,) at and for the price or sum of 70*l.* Now know ye, that I, the said *W. A.* sheriff as aforesaid, for and in consideration of the said sum of 70*l.* of lawful money of *Great Britain*, to me in hand paid by the said *S. R.* at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold and assigned, and by these presents do bargain, sell and assign, unto the said *S. R.* the said within written indenture of lease, and all my estate, right, title, and interest therein. In witness, &c.

Bail Bond.

KNOW all men by these presents, that we *J. F.*, &c. *G. H.* of, &c. and *I. K.* of, &c. are held and firmly bound to *Thomas Fenn*, esquire, sheriff of the county of *O.* in 40*l.* of lawful money of *Great Britain*, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, for which payment to be well and faithfully made, we bind ourselves, and each of us by himself, for the whole and every part thereof, and the heirs, executors, and administrators, of us, and every of us, firmly by these presents, sealed with our seals, dated this day of _____ in the 26th year of the reign of our sovereign lord *George the third*, by the grace of God, of *Great Britain, France and Ireland*, king, defender of the faith, &c. and in the year of our Lord 1786.

The condition of this obligation is such, that if the above bounden *J. F.* do appear before the king, at *Westminster*, on *Monday next, after the Morrow of All Souls*, to answer *Richard Roe*, in a plea of trespass, and also to a bill of the said *Richard*, to be exhibited against the

the said *J. F.* for 40*l.* on promise, then this obligation to be void, and of no force, otherwise to stand and remain in full force, vigor, and effect.

Sealed and delivered in
the presence of

In the condition of these bonds, pursue the substance of the writ, such as "*the day of the return, and when to appear, as also to answer the plaintiff in his plea.*"

Assignment of a Bail Bond, vide fo. 124.

KNOW all men by these presents, that I *A. B.* esquire, sheriff of the of the county of *Oxford*, within named, have at the request of *A. B.* the plaintiff, also within named, assigned to him the said plaintiff, the within written bail-bond, pursuant to the statute in such case made and provided. In witness whereof I have herunto set my hand and seal of office, this day of within the year of our Lord 1786.

If the sheriff goes out of office, and he is afterwards to assign the bond, then call him "*late sheriff.*"

The sheriff usually takes an indemnity from the plaintiff, or his attorney, the charge is 5*s.* in town, 6*s.* 8*d.* country, but I do not find the necessity of indemnifying, nor are they bound to do it, for the act directs the assignment to be made.

Receipt for a Bail Bond.

I DO hereby acknowledge to have had and received of and from *R. C.* esquire, sheriff of the county of *Berks*, the bail-bond, for the appearance of *E. M.* before the justices of his majesty's court of *Common Pleas*, at *Westminster*, (*the return,*) to answer to *J. H.* in a plea of trespass on the case in the penalty of 100*l.* and dated the 19th of *June* last past, together with an assignment thereon indorsed pursuant to the statute in such case made and provided; And in consideration thereof, I do hereby promise to save harmless and indemnify the said sheriff of and from all actions, suits, amercements and costs whatsoever, relating to the said cause, bail-bond, or assignment thereof, as witness my hand.

Bond

Bond of Indemnity to Sheriff for Payment of Money under a fieri facias.

BOND from *A. B.*, *C. D.*, and *E. F.* of, &c. to *H. D.* esquire, sheriff of the county of _____ in the penal sum of 500*l.* Whereas by virtue of his majesty's writ of *feri facias*, directed unto the above named sheriff, commanding him, that he should cause to be made of the goods and chattels of *C. B.* in his bailiwick, as well a certain debt of 200*l.* which the above bounden *A. B.* had recovered against him, in his majesty's court before the king himself, as also 63*s.* which in his majesty's same court was awarded to the above bounden *A. B.* as well for his damages, which he sustained by reason of the detaining the said debt, as for his costs and charges by him, about his suit in that behalf expended, and that the said sheriff should have that money before the king at *Westminster*, on *Monday* next, after the *Morrow of All Souls* last past, to render to the above bounden *A. B.* for the debt and damages aforesaid, whereof the said *C. B.* was convicted; And whereas, by virtue of the said writ, the abovesaid sheriff hath taken goods and chattels, of the said *C. B.* and sold the same for the sum of 100*l.* being the best price he could get for the same. And the above bounden *A. B.* hath applied to and requested of the said sheriff to pay him the monies so levied, on being properly indemnified, which the said sheriff hath agreed to do. Now the condition of this obligation is such, that if the said *A. B.*, *C. D.*, and *E. F.*, their and each of their heirs, executors, and administrators, save harmless, and keep indemnified him the said sheriff, his undersheriff, bailiffs, and officers, of, from, and against all manner of action and actions, suit and suits, either at law or in equity, brought or to be brought against them or either of them, for or by reason of the levy or payment of the said sum of 100*l.* to the above bounden *A. B.* and also of from and against all costs, charges, damages, and expences, they or either of them, may be put to, for or on account thereof, then this obligation to be void, otherwise to be and remain in full force, strength and effect.

Bargain and Sale by Sheriff.

TO all to whom these presents shall come, *I C. D.* of, &c. esquire, sheriff of the county of _____ send greeting: Whereas by virtue of his majesty's writ of *feri facias* unto me directed, commanding me, &c. (here recite to the end of the *feri facias*,) (as by the said writ of *feri facias*, relation being thereto had will more fully and at large appear.) Now know all men by these presents, that I the said sheriff, for and in consideration of the sum of 100*l.* of lawful money of

of Great Britain, to me in hand paid by C. K. of, &c. Esquire, at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, have bargained and sold, and by these presents do bargain and sell unto the said C. K. all and singular the goods and chattels following, by me taken in execution by virtue of the said writ of *fieri facias*, (that is to say,) one chest of drawers, one feather bed, (*here set forth the inventory of the goods.*) all which said goods, and chattels, I the said Sheriff, at the sealing and delivery hereof, have delivered to the said C. K. to have and to hold the same unto the said C. K. his executors, administrators, and assigns, as his and their own proper goods and chattels, to his and their own use and benefit for ever. In witness whereof I the said Sheriff, have hereunto set my hand and seal of office, this day of _____ in the 40th year of the reign of, &c. and in the year of our Lord 1799.

THE END.

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TO THE OFFICE OF SHERIFF.

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pleaded, it turns out on a vo-
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and the plaintiff proceeds to
final judgment, yet the action
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not brought until after final
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ferred a voluntary escape, the prisoner was discharged from the creditor and the action transferred to the sheriff *P. 203*
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 If the marshall, &c. shall take any reward from any prisoner to effect an escape, he forfeits *500 l.* *ib.*
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Person in the Queen's Bench, or Fleet prison committed, or rendered, or charged in the custody of the marshall of Fleet prison, on mesne process or execution, &c. making escape, it shall be lawful on oath for judge to grant warrant, &c. for retaking *207*
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every 20 *s.* above that sum; and
on process by *fi. fa.* and *extent*,
to have 1 *s.* 6 *d.* per pound
for the first 100 *l.* and 1 *s.* per
pound above, provided he an-
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damages to the party, and
double what is so *nichilled*, or
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- If sheriff makes extent, and before liberate a new sheriff chosen, new sheriff to have fees. *Vide* 3 *Geo.* 1. *ib.*
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No sheriff, under-sheriff, deputy, or bailiff of any franchise, &c. shall, for executing an *habere facias possessionem aut seisinam*, demand or receive above 12 *d.* per pound of the yearly value of any manor, messuage, &c. whereof possession or seisin shall be given, whereof the whole exceeds not 100 *l.* *per annum*, or 6 *d.* for every 20 *s.* above 100 *l.* yearly value 188

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by a day to be fixed by warrant of the barons Page 502

When a sheriff by exchequer process seizes or extends goods, or personal estate, for the king's debts, and dies, or is superseded before a *condemni expodus* awarded, or sale, and the subsequent sheriff makes sale, &c. the exchequer court, if sitting, or if not, any baron may settle and apportion the fees or poundage between the precedent and subsequent sheriffs, regard being had to the expences and trouble of each sheriff ib.

And if a sheriff shall *nihil*, or not answer such debts collected, he forfeits for each offence treble damages to the party, and double what is so *nichilled*, or not answered, to be ordered by the court of exchequer on complaint; and if a sheriff, &c. demands or takes any money for executing such process (or as fees,) for collecting such debts, or for not levying or forbearing to levy any debt to the crown, guilty of extortion, and forfeits treble damages 504

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